

IN THE SENATE OF THE UNITED STATES.

MARCH 24, 1880.—Ordered to be printed.

Mr. CAMERON, of Pennsylvania, from the Committee on Naval Affairs, submitted the following

REPORT:

[To accompany bill S. 201.]

The Committee on Naval Affairs, to whom was referred the bill (S. 201) for the relief of Somerville Nicholson, having duly considered the same, beg leave to submit the following report:

The facts in this case show that Captain Nicholson has been in the naval service since June, 1839. His ability, his professional cultivation, his gallantry in action, and his fidelity to duty are all conspicuously admitted, even by those who are opposed to his promotion. The board itself which rejected his application decided, in stronger language than is usual in such cases, "that Captain Nicholson possesses in a high degree the mental and professional qualifications to perform efficiently all the duties of a naval officer at sea in the next higher grade."

His record is herewith submitted:

RECORD OF SERVICE OF CAPTAIN S. NICHOLSON, U. S. N.

June 21, 1839, appointed acting midshipman.

From July 9, 1839, to July 31, 1842, served on board United States frigate Brandywine (Mediterranean).

From February 1, 1843, to January 29, 1844, served on board United States brig Truxton, bringing the remains of Commodore D. D. Porter from Constantinople to the United States.

From March 11, 1844, to April 13, 1844, on board the United States steamer Princeton.

August 29, 1844, ordered to naval-school, Philadelphia; passed my examination in May, 1845.

From June, 1845, to January 21, 1848, on coast survey duty.

From January 21, 1848, to August 4, 1849, acting master on board United States steamer Allegheny (Brazil and Mediterranean stations).

From August 17, 1849, to October 8, 1852, on coast survey duty.

From October 8, 1852, to April 25, 1855, served as acting master and lieutenant on board the United States ships Powhatan and Mississippi, attached to Commodore Perry's Japan expedition.

May 5, 1854, commissioned lieutenant.

From January 10, 1856, to April 31, 1857, on ordnance duty, Washington Navy-Yard.

From April 12, 1857, to September 3, 1859, on board United States ship Cumberland (African station).

From October 29, 1859, to December 5, 1860, on ordnance duty, Washington Navy-Yard.

From December 5, 1860, to January 2, 1862, on board United States ship Macedonian (Gulf of Mexico and home stations).

From January 10 to December 26, 1862, in command of United States ship Marblehead (coöperating with McClellan's army, York and Pamunkey Rivers, and blockading duty off Charleston).

July 16, 1862, promoted to lieutenant-commander.

January 2, 1863, promoted to commander.

From June 1, 1863, to October 20, 1863, in command of iron-clad Sangamon (James River).

From November 3, 1863, to November 9, 1864, in command of United States ship State of Georgia, on blockade duty off Wilmington.

From November 9, 1864, to July 3, 1865, in command of United States ship Galatea (convoy duty, West Indies).

From August 21, 1865, to September 27, 1866, special duty, Washington Navy-Yard.

From September 27, 1866, to October 1, 1868, as assistant to executive officer, Washington Navy-Yard.

From February 23, 1869, to October 31, 1869, member of ordnance board, Washington, D. C.

From November 1, 1869, to October 9, 1869, command of United States ship Benicia, Asiatic squadron.

From April 6, 1871, to December 1, 1871, member of special board, Washington Navy-Yard.

From August 15, 1873, to February 24, 1874, in command of flagship Lancaster, South Atlantic station, and drill squadron, Pensacola Bay.

November 27, 1874, suspended from duty (by sentence of court-martial) for six years, on furlough pay, from April, 1874.

June 1, Secretary of the Navy remitted that part of the sentence placing me on furlough pay, and on October 3, 1876, Secretary of the Navy revoked the unexpired portion of the sentence.

It will thus be seen that Captain Nicholson had been in the service of his country thirty-five years and two months, when he had the misfortune to incur, for the first time in his life, the sentence of a court-martial for the fault of intemperance. It will also be seen that there were mitigating circumstances, as two-thirds of the period of suspension was remitted, by order of the President, in October, 1876. This action of the President of course restored Nicholson to active duty, and to all his rights in the service, as if nothing had happened to interrupt them. Under these circumstances, in October, 1877, he was ordered before the naval examining board, convened at the Navy Department, for examination as to his physical, mental, moral, and professional fitness for promotion to the next higher grade in the naval service. That board unanimously concurred in the opinion that his qualifications as a skillful and efficient officer were of a superior character, but, by a divided vote, his right to promotion was denied on account of alleged intemperate habits. On this finding the following indorsement was made by the President:

EXECUTIVE MANSION,
February 12, 1878.

The finding of the board in this case is disapproved.

R. B. HAYES.

Afterward, on the 23d day of February, 1878, another examining board was convened at the Navy Department, before which Captain Nicholson was again ordered for examination for promotion. His examination for promotion to a captaincy had taken place in 1870, and the Secretary of the Navy, under date of February 15, 1878, issued instructions, amongst others, to the board then about to convene on the 23d of February, 1878, that "no fact which occurred prior to the last examination of the candidate must, for any purpose, be inquired into or considered in any case, and the record must show, as fully as may be practicable, everything which assisted the board in forming its opinion." (*See page 43.*)

Yet, in the face of this explicit instruction, it is manifest on almost every page of the proceedings of the board that witnesses were called and examined as to Captain Nicholson's life and conduct, not merely as far back as 1870, when he became a captain, but from his boyhood, and touching every period of his service for a space of nearly forty years. It is submitted that the examination in this respect was

irregular, and in plain violation of the rules and regulations of the naval service. It appears from the record that Captain Nicholson protested at the time against such a course of procedure, but was overruled. A very wide field of investigation was opened, and a large number of witnesses were interrogated. There were thirty-two naval officers, two general officers of the army, and five civilians examined. In all this array not one was found to question Captain Nicholson's professional acquirements, his gallantry, or his devotion to duty. Twenty-two of these witnesses sustain Captain Nicholson's fitness for promotion, on all points and in every respect; while of the remaining seventeen not more than three undertake to speak of anything, however slight or vague, as within their own personal knowledge, while the others confine themselves to hearsay evidence, which would not be received in any court of justice.

In order to show the character of proof submitted by Captain Nicholson, a few passages may be properly cited from the testimony in the record. On page 6 of the published proceedings is found the following:

General GEORGE C. THOMAS, being present, was next called as a witness, and, being duly sworn, testified as follows:

Question. Please state your name, rank, and residence.—Answer. George C. Thomas, major-general, commanding District of Columbia. I have been connected with the War Department and the Army forty-five years, and am a graduate of West Point, and reside in Georgetown, D. C.

Q. Please state how long you have known Captain Nicholson, and what opportunity you have had of judging of his character.—A. I have known Captain Nicholson upwards of thirty years, and have had every opportunity of judging of his character during the whole time, and especially the last four years, as neighbors and frequent visitors in Georgetown.

Q. From your personal knowledge, do you consider that Captain Nicholson has habits of intemperance that unfit him for the position of commodore in the Navy?—A. Not in the least.

There being no further questions to ask the witness, his testimony as recorded was then read over to him, and by him pronounced correct.

General W. D. WHIPPLE, being called, appeared as a witness in the case, and, being duly sworn, testified as follows:

Question. Please state your name, rank, and present duty.—Answer. W. D. Whipple, colonel and aid-de-camp, United States Army, and brevet major-general, on duty at Headquarters.

Q. Please state how long you have known Captain Nicholson, and what opportunity you have had of judging of his character.—A. I have known Captain Nicholson about three years. I live near him in Georgetown; have frequently met him at his own house and at my house, and elsewhere about town.

Q. From your personal knowledge, do you consider that Captain Nicholson has habits of intemperance that unfit him for the position of commodore in the Navy?—A. From my personal knowledge, I consider that he has not habits that unfit him for promotion or for the position of commodore in the Navy.

The testimony of General Whipple being concluded, it was read over to him, and by him pronounced correct.

General L. H. PELOUZE was next called as a witness, and, being duly sworn, testified as follows:

Q. Please state your name, rank, and present duty.—A. Louis H. Pelouze; major and assistant adjutant-general, United States Army, and at present on duty in the War Department.

Q. Please state how long you have known Captain Nicholson, and what opportunity you have had of judging of his character.—A. I have known Captain Nicholson since some time in the fall of 1876. We have met frequently in Georgetown and in this city.

Q. From your personal knowledge, do you consider that Captain Nicholson has habits of intemperance that unfit him for the position of commodore in the Navy?—A. From my personal knowledge he has not such habits.

The testimony of the witness, being concluded, was read over to him, and by him pronounced correct as recorded.

Hon. H. D. COOKE was then called as a witness, and that gentleman appearing, was duly sworn, and testified as follows:

Q. Please state your name and residence.—A. H. D. Cooke, Georgetown, D. C.

Q. Please state how long you have known Captain Nicholson, and what opportunities you have had of judging of his character.—A. I have known Captain Nicholson six or seven years; about the last four years of which time he has lived next door to me in Georgetown. I have seen him daily, and there has been a good deal of intercourse between our families and ourselves.

Q. From your personal knowledge, do you consider that Captain Nicholson has habits of intemperance that unfit him for the position of commodore in the Navy?—A. From personal knowledge I do not. On the contrary, all that I know of him will justify my opinion that his habits are exemplary and unexceptionable in that particular.

The testimony of the witness, being concluded, was then read over to him, and by him pronounced correct.

On page 5 will be found the following:

Mr. W. W. CORCORAN, being present, was called as a witness in the case, and, being duly sworn, testified as follows:

Q. Please state your name and residence.—A. W. W. Corcoran, Washington, D. C.

Q. Please state how long you have known Captain Nicholson, and what opportunities you have had of judging of his character.—A. I have known Captain Nicholson about twenty-five years. He married my niece. An intimacy between us during that time has given me opportunities of judging of his character.

Q. From your personal knowledge, do you consider that Captain Nicholson has habits of intemperance that unfit him for the position of commodore in the Navy?—A. I would say that for the last four or five years Captain Nicholson has come under my personal observation. I have generally seen him as often as four or five times a week at my house, and his conduct has been highly commendable. I have never seen him, in the slightest degree, under the influence of liquor; and he has shown no evidence whatever that he has habits of intemperance.

There being no further questions to ask the witness, the testimony was then read over to him, and by him pronounced correct as recorded.

Looking to the testimony of those who have known him longest, and with whom he has principally served in the Navy, the following is submitted:

Interrogatories addressed to Commodore Thomas H. Stevens, U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Capt. S. Nicholson?—A. Since his childhood.

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; and did he perform his duty in an efficient manner?—A. Captain Nicholson served with me when I commanded an expedition up the Pamunkey River, in May, 1862, to open the way for McClellan's advance to Richmond and to protect a cavalry detachment near the White House. Captain Nicholson's services were of great value and most efficient. He commanded the Marblehead at the time, and very ably.

No. 3. In your association with Captain Nicholson, do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?—A. In my official association with Captain Nicholson, to which I presume these questions refer, my reply is in the negative to both interrogatories.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson, do you or not consider him mentally qualified for promotion?—A. I consider Captain Nicholson, on the score of general intelligence and ability, one of the first officers in the Navy.

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Nicholson professionally qualified for promotion?—A. Captain Nicholson's professional attainments are of a high order and fully qualify him for promotion.

No. 6. What is the general reputation of Captain Nicholson in the Navy as an officer and gentleman?—A. I know him to be a thoroughly competent and gallant officer and an accomplished gentleman, and such is the estimate of his brother officers.

No. 7. Would you, as commander of a squadron, have sufficient confidence in Cap-

tain Nicholson to send him on an important separate service in command of a vessel of war?—A. Yes; and would feel, if the occasion were one of peril where nerve and dash were essentially required, it could not be in better hands.

No. 8. Do you or not consider Captain Nicholson to be mentally, morally, and professionally fit officer to perform all his duties at sea in a higher grade?—A. Yes.

T. H. STEVENS,
Commodore, United States Navy.

Witness:

GEO. R. BOUSH,
Naval Constructor, U. S. N.

W. A. H. ALLEN,
Passed Assistant Engineer, U. S. N.

Interrogatories addressed to Commodore Foxhall A. Parker, U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Capt. S. Nicholson?—A. Since our boyhood.

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; and did he perform his duty in an efficient manner?—A. We served together about two months in the Bay of Florida in 1873, he in command of the *Lancaster*, I as "chief of staff of the united fleets," commanded by Rear-Admiral Case. He performed his duties as a divisional commander remarkably well.

No. 3. In your association with Captain Nicholson, do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?—A. I have no reason to believe him given to bad habits. He was tried on a charge of intoxication aboard the *Lancaster*, but I have never heard the result of the trial.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson, do you or not consider him mentally qualified for promotion?—A. I consider him mentally qualified.

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Nicholson professionally qualified for promotion?—A. I consider him professionally qualified.

No. 6. What is the general reputation of Captain Nicholson in the Navy as an officer and gentleman?—A. He is considered a thorough gentleman. Rumor says his character as an officer is injured by habits of intemperance.

No. 7. Would you, as commander of a squadron, have sufficient confidence in Captain Nicholson to send him on an important separate service in command of a vessel of war?—A. As far as my own personal knowledge of him goes, yes.

No. 8. Do you or not consider Captain Nicholson to be mentally, morally, and professionally a fit officer to perform all his duties at sea in a higher grade?—A. As far as my own personal knowledge of him goes, yes.

FOXHALL A. PARKER,
Commodore, United States Navy.

Witnesses:

E. Y. MCCAULEY,
Captain, United States Navy.

B. B. TAYLOR,
Commander, United States Navy.

Interrogatories addressed to Commodore John Guest, U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Capt. S. Nicholson?—A. From boyhood.

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; and did he perform his duty in efficient manner?—A. In China and Japan, under Commodore Perry; in the same squadron, but not in the same vessel. He was distinguished for efficiency.

No. 3. In your association with Captain Nicholson do you or not know of his having

habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?—A. I do not consider that he has habits which disqualify him for promotion. In social life he is a free liver.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson, do you or not consider him mentally qualified for promotion?—A. Decidedly, yes.

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Nicholson professionally qualified for promotion?—A. Eminently so.

No. 6. What is the general reputation of Captain Nicholson in the Navy as an officer and a gentleman?—A. Excellent; of high tone.

No. 7. Would you, as commander of a squadron, have sufficient confidence in Captain Nicholson to send him on an important service in command of a vessel of war?—A. I would; with perfect confidence.

No. 8. Do you or not consider Captain Nicholson to be mentally, morally, and professionally a fit officer to perform all his duties at sea in a higher grade?—A. I do.

JOHN GUEST,

Commodore United States Navy.

Witnesses:

EARL ENGLISH,
Captain, United States Navy.

HENRY ERBEN,
Commander, United States Navy.

Interrogatories addressed to Medical Inspector William T. Hord, U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Capt. S. Nicholson?—A. Since 1873.

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity.—A. In 1873, on the Brazil station, and as captain of the Lancaster.

No. 3. In your association with Captain Nicholson, do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?—A. I know of no habits which disqualify him for promotion. I never saw him intoxicated while on board ship. Subsequent to sailing with him I met him nearly every day for two years, at Georgetown, where we both resided, and never knew him to be intoxicated.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson, do you or not consider him mentally qualified for promotion?—A. I do.

No. 6. What is the general reputation of Captain Nicholson in the Navy as an officer and gentleman?—A. Excellent.

No. 8. Do you or not consider Captain Nicholson to be mentally and morally a fit officer to perform all his duties at sea in a higher grade?—A. I do.

WM. T. HORD,

Medical Inspector, United States Navy.

Witnesses:

FRANCIS H. SWAN,
Paymaster, United States Navy.

D. DICKINSON,
Passed Assistant Surgeon, U. S. N.

Interrogatories addressed to Rear-Admiral L. M. Powell, U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a board in session at Washington D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Capt. S. Nicholson?—A. From his youth.

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; and did he perform his duty in an efficient manner?—A. I do not remember that Captain Nicholson has sailed or served with me on any station or duty.

No. 3. In your association with Captain Nicholson, do you or not know of your own

personal knowledge of his having habits which render him unqualified for promotion, or have you reason to believe him, from your personal knowledge, given to habits of intemperance?—A. My association with Captain Nicholson has been of a society character, and I have never seen any evidence of intemperance. I have no reason, from my own knowledge, to believe him given to habits of intemperance.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson, do you or not consider him mentally qualified for promotion?—A. I have a very high opinion of Captain Nicholson's general intelligence and capacity. I consider him mentally qualified.

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Nicholson professionally qualified for promotion?—Answer the same as to interrogatory No. 2.

No. 6. Would you, as commander of a squadron, have sufficient confidence in Capt. Somerville Nicholson to send him on an important separate service in command of a vessel of war?—A. If I was in command of a squadron and Captain Nicholson serving under my command, I could determine what I would do in the premises. From my personal knowledge I know of nothing that would forbid it.

No. 7. Do you or not consider Captain Nicholson to be mentally, morally, and professionally a fit officer to perform all his duties at sea in a higher grade?—A. Mentally, certainly; morally, so far as I know; and professionally, answered as above to interrogatory No. 2.

L. M. POWELL,
Rear-Admiral, United States Navy.

Subscribed and sworn to before me this 2d March, 1878.

[L. S.]

JAMES C. DULIN,
Justice of the Peace.

The following testimony of Admiral Lee is submitted for two reasons: 1st, to show that the board violated the instructions of the Secretary in inquiring into Captain Nicholson's conduct in 1863 and 1864, which was passed upon in his examination for promotion in 1870; and 2d, for the purpose of showing how slight a defect Admiral Lee remembers in the conduct of one whom he has known a quarter of a century, and who was for a long time his subordinate officer:

Interrogatories addressed to Rear-Admiral S. P. Lee, U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Captain Nicholson?—A. Some time before the late civil war.

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; and did he perform his duty in an efficient manner?—A. He commanded first an iron-clad, then a blockader, in the North Atlantic blockading squadron, then under my command, for one year and four months in 1863 and 1864. He was efficient and gallant.

No. 3. In your association with Captain Nicholson, do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?—A. During the period referred to (in No. 2) he was once under the influence of liquor on duty. I have never seen him so before or since when on or off duty, in war or peace.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson, do you or not consider him mentally qualified for promotion?—A. Yes.

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Nicholson professionally qualified for promotion?—A. Yes.

No. 6. What is the general reputation of Captain Nicholson in the Navy as an officer and gentleman?—A. Good, so far as I personally know, except as to the partial qualification in my answer to No. 3.

No. 7. Would you, as commander of a squadron, have sufficient confidence in Captain Nicholson to send him on an important separate service in command of a vessel of war?—A. Yes; provided the main feature required in the important separate service was gallant conduct.

No. 8. Do you or not consider Captain Nicholson to be mentally, morally, and professionally a fit officer to perform all his duties at sea in a higher grade?—A. Yes; so far as I know from his service under my command.

S. P. LEE,
Rear-Admiral.

Witnesses:

WILLIAM N. JEFFERS,
Commodore.

EDWARD P. LULL,
Commander, United States Navy.

JOHN J. KEY was next called as a witness by Captain Nicholson, and that gentleman being present was duly sworn by the president of the board, and testified as follows:

Q. (By Captain Nicholson.) Please state your name, residence, and present occupation.—A. John J. Key; residence, Georgetown, D. C.; and a lawyer by profession.

Q. How long have you known Captain Nicholson?—A. I have been intimately associated with Captain Nicholson since the year 1873. I know of Captain Nicholson by reputation, and frequently have heard of him—as early as the year 1862. Some knowledge of Captain Nicholson's character was given to me by my brother, Colonel Key, who was a member of General McClellan's staff at that time, who met Captain Nicholson during the time that McClellan was on York River and during the Peninsular campaign. This information was exceedingly favorable to Captain Nicholson, both as to that officer professionally and morally.

Q. In your association with Captain Nicholson, do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?—A. I, as stated, became intimately acquainted with Captain Nicholson in 1873. The social relations existing between the two families have thrown Captain Nicholson and myself together in our intercourse with one another almost weekly, and at any rate frequently, except when I would be absent for a longer period from my home. During the period of time I have spoken of, at our homes and in general society, I have frequently had an opportunity of ascertaining and knowing the habits of Captain Nicholson as to temperance or intemperance. During that period of time, if he had been a man of intemperate habits, in my opinion the same must have become known to me. From my knowledge I state that I believe Captain Nicholson's habits since the year 1873 have been good. In connection with this, on the New Year's days 1876 and 1877 Captain Nicholson and myself together made the usual calls on our friends, and on each of those occasions, while Captain Nicholson did not entirely abstain from the use of wine, he did not use it to excess, or as much as was ordinarily the habit of gentlemen making those social visits. We commenced our visits together and they were closed together, when we returned to our homes in the evening. Unqualifiedly I say that Captain Nicholson's habits since I have known him do not disqualify him, in any degree, from promotion in his profession.

Q. Would you, as a large owner of an important steamship company, have sufficient confidence in the moral and professional character of Captain Nicholson to intrust him with the command of one of its ships when freighted with a valuable cargo?—A. From my knowledge of Captain Nicholson, and from his reputation, both public and from other sources, I would have every confidence in intrusting him with any vessel, however valuable her cargo might be.

Q. (By the Board.) You have given in your answers the impressions you received of Captain Nicholson from your brother; have you ever heard from other sources anything in reference to Captain Nicholson's being given to habits of intemperance?

(Captain Nicholson objected to the question being put to the witness.)

The board was cleared to consider the objection of Captain Nicholson.

The doors being opened, and the candidate and the witness being present, the recorder announced that the board had decided to overrule the objection.

The question of the board to the witness, as recorded, was then read aloud by the recorder.

A. Yes; I have. Without being able now to remember either gentlemen, officers of the Navy or citizens, I have frequently heard the habits of Captain Nicholson spoken of, and I have heard expressions of opinion widely differing, both from gentlemen connected with the Navy and others. In those expressions and views generally, and I may say always, as far as I recollect, was connected with Captain Nicholson previous to my acquaintance with him. Since that time I have heard but one expression, that, whatever might have been the habits of Captain Nicholson during a certain period of his life, they were now of a character such as his restoration would conduce to the interests of the country, and that he was entirely, both from a knowledge of his pro-

fession and present condition, a fit person to whom to intrust the interests of his country.

There being no further question to ask the witness, his testimony, as recorded, was then read over to him, and by him pronounced correct; whereupon the witness withdrew.

The testimony adverse to the promotion of Captain Nicholson, as has already been stated, is almost exclusively of a hearsay character, and is mainly derived from those with whom he has not served, and with whom his relations are not so intimate as with those whose testimony has just been cited. There are a few statements made from alleged personal knowledge, but Captain Nicholson insists that the parties were mistaken, and he is corroborated in one marked instance, at least. Rear-Admiral Ammen, in his testimony, stated to the board that Captain Nicholson "visited the Patapsco in November, 1862, and went from Wilmington, Del., to Philadelphia—a passage of a few hours"; when, in point of fact, Nicholson was at that time in command of the *Marblehead*, off Charleston, on blockading duty. Admiral Ammen afterwards admitted, in a letter to this committee, that he was mistaken.

The reputation which was found to exist among several naval officers, to the effect that Captain Nicholson was a man of intemperate habits, is easily traced to the single and unfortunate occurrence for which he was tried in 1874. Those, however, who know him best, and have the fullest knowledge of his whole life and conduct, insist and testify that his habits are correct, and that a long career of honorable and gallant service to his country ought not to be perpetually blackened and his fame destroyed by one offense. No officer in the Navy has a better record for capacity and courage than Captain Nicholson. This is conceded by all; and in view of all the facts and circumstances in his case, the committee recommend the relief asked for in the bill now before it on that subject.

[Ex. Doc. No. 89. 45th Congress, 2d session.]

Letter from the Secretary of the Navy, transmitting, in answer to a Senate resolution of April 16, 1878, copies of the record of proceedings of the Naval examining board in the case of Capt. Somerville Nicholson, United States Navy, for promotion.

NAVY DEPARTMENT, Washington, May 27, 1878.

SIR: In compliance with the Senate resolution dated the 16th ultimo, I have the honor to transmit herewith copies of the records of examination in the case of Capt. Somerville Nicholson, United States Navy.

Very respectfully,

R. W. THOMPSON,
Secretary of the Navy.

Hon. WILLIAM A. WHEELER,
Vice-President of the United States.

RECORD OF PROCEEDINGS OF THE NAVAL EXAMINING BOARD, CONVENED AT THE NAVY DEPARTMENT, WASHINGTON, D. C., IN CASE OF CAPT. SOMERVILLE NICHOLSON, UNITED STATES NAVY, OCTOBER 16, NOVEMBER 3, 9, 13, 14, 15, AND 20, 1877.

NAVAL SOLICITOR'S OFFICE, November 30, 1877.

These proceedings are correct in form and substance, but the board are not unanimous, a majority only finding that Captain Nicholson has failed, &c. The Solicitor submits herewith a special report, which is attached to the next leaf of this record.

JOHN A. BOLLES, *Naval Solicitor.*

EXECUTIVE MANSION, February 12, 1878.

The finding of the board in this case is disapproved.

R. B. HAYES.

*Report of Naval Solicitor on examination of Capt. Somerville Nicholson, United States Navy.*NAVY DEPARTMENT, NAVAL SOLICITOR'S OFFICE,
Washington, November 30, 1877.

Captain Nicholson has been examined for promotion by both of the boards named in sections 1493 and 1497. Only one of those boards recommends him for promotion.

Under section 1447 of the Revised Statutes, he must now be retired, unless the President non-concur with the examining board, which finds Captain Nicholson morally unfit for promotion, and by sending the case back for reconsideration, or by sending it to a new board, shall obtain a report in which he can concur.

Will the President approve the present finding of the board, and order Captain Nicholson to be retired, or will he disapprove that finding and send the proceedings back for reconsideration, or refer the case to a new board?

To answer these questions intelligently involves an inquiry into the evidence which led this board to regard Captain Nicholson as morally unfit for promotion. That evidence may bring the mind of the President to the same unfavorable opinion; or may convince him that neither this board, nor any other, will report favorably on the case.

What was the evidence before the board?

1st. The board had before it the record of proceedings of a court-martial (No. 5642), which, in March, 1874, convicted Captain Nicholson of drunkenness in December, 1873, and in January and February, 1874, while in command of the Lancaster, sentenced him to ten years on furlough, with loss of rank during that time. As Captain Nicholson was then over fifty-two years of age, and must go upon the retired list at the age of sixty-two, this sentence was equivalent to perpetual dismissal from the active list of the Navy.

But that sentence, though approved, was mitigated, and in consequence of that mitigation, Captain Nicholson became entitled to promotion, in due course, *provided*, the two boards and the President should concur in the opinion of his fitness for promotion.

Since the conviction in 1874, Captain Nicholson has not been intrusted with the command of any vessel, nor been assigned to active duty.

A careful study of the evidence which led to this conviction has convinced the Naval Solicitor that the court could not, upon that evidence, have acquitted Captain Nicholson.

2d. The examining board had before it the testimony of Rear-Admirals John Rogers and A. L. Case, and of Commodores Cooper, Rhind, Ransom, and Spicer, all of whom speak of Captain Nicholson's habits, or reputation, or both, as bad in regard to intemperance. None of them have known what his habits have been since his conviction in 1874. None of them express the opinion that he is morally fit for promotion, and none would be willing to send him on important service in command of a vessel.

3d. To prove his fitness morally, Captain Nicholson introduced both written and oral testimony. His written evidence consisted of the statements of Rear-Admiral Strong, who says he has had the reputation of being dissipated; of Rear-Admiral Murray, who has seen him under the influence of liquor, but does "not think him disqualified"; of Commodore Stevens, who, being asked if he has reason to believe that Captain Nicholson is given to habits of intemperance, says "not from my official association with him"; of Commodore F. A. Parker, who says "rumor says his character as an officer is injured by habits of intemperance"; of Commodore John Guest, who says "I do not consider that he has habits which disqualify him for promotion. In social life he is a free liver"; of Medical Inspector Hord, who sailed with him in the Lancaster in 1873-'74, and lived near him in Georgetown in 1874-'75, and never saw him intoxicated; and of Chaplain Rose, who was with him in the Lancaster, but never saw any bad habit, though he heard much conflicting evidence as to his "habits for intemperance."

Captain Nicholson's oral testimony, produced before the board, related to his habits during the time since his conviction, and comes from his Washington and Georgetown neighbors, none of these witnesses being in the naval service. These witnesses are W. W. Corcoran (an uncle of Captain Nicholson by marriage), Henry D. Cooke, General George C. Thomas, General W. D. Whipple, and General L. H. Pelouze, all of whom have seen Captain Nicholson often and intimately during the last four years, and speak of his habits as perfectly sober so far as they have seen during that period.

This is the evidence now submitted to the President.

Upon this evidence Captain Nicholson thinks and argues that, although it be proved that he was intemperate prior to his conviction and suspension, yet, if his neighbors for the last four years bear witness to his sobriety, he ought to be regarded as fit for promotion now.

The practical question in this case is this, viz, Will the President consider a captain worthy of promotion when, in 1873 and 1874, being in command of a ship of war, was four times so much intoxicated as to be unfit for duty, but who has been sober and out of active service ever since; and will the President expect this board to change its opinion on reconsideration of this case, or another board to make a finding different from this?

Unless this board change its opinion, or another board come to a different opinion, Captain Nicholson, under section 1474 Revised Statutes, must be retired.

To the solicitor it does not seem probable that this board will vary its finding, or that another board would, on the same evidence, recommend for promotion.

JOHN A. BOLLES,
Naval Solicitor.

NAVAL EXAMINING BOARD,
Washington, October 16, 1877.

The board met this day at 10½ o'clock a. m., pursuant to the adjournment of yesterday. Present, Vice-Admiral S. C. Rowan, president; Commodore G. B. Balch, Commodore C. H. Baldwin, members; and James C. Dulin, recorder.

A copy of the order of the Secretary of the Navy convening the board is hereto appended and marked A.

The record of the proceedings of yesterday was read and approved.

Capt. Somerville Nicholson, United States Navy, appeared before the board as a candidate for examination for promotion, in obedience to an order, acopy of which is hereto appended and marked B.

The board then proceeded to take up the examination in the case.

The order convening the board was read aloud by the recorder in the presence and hearing of the candidate.

The president of the board then swore the recorder to the faithful performance of his duty as recorder.

The recorder then swore the members of the board faithfully and impartially to examine and report upon the candidate about to be examined.

The board having by vote on the 1st October last designated Rear-Admirals John Rodgers, A. L. Case, and Commodores J. W. A. Nicholson, G. H. Cooper, A. C. Rhind, G. M. Ransom, and W. F. Spicer, United States Navy, to whom interrogatories shall be forwarded in the case of Captain Nicholson, and those officers having duly answered and returned to the board said interrogatories, they were read in evidence and are annexed to this record, and marked respectively C, D, E, F, G, H, I.

At the conclusion of the reading of the interrogatories and answers in the case, Captain Nicholson requested time in which to prepare and submit to the board additional names of officers to whom he desired interrogatories addressed in his case.

The board, after consideration, granted Captain Nicholson's request; and that officer thereupon prepared and submitted to the president of the board a letter requesting that interrogatories be sent to the following officers, viz: Rear-Admirals J. H. Strong, Alexander Murray, Commodores Foxhall A. Parker, Thomas H. Stevens, and John Guest, Medical Inspector W. T. Hord, and Chaplain F. B. Rose, United States Navy.

The letter of request of Captain Nicholson is hereto appended and marked J.

The board then directed interrogatories to be addressed to the officers named, and it thereupon suspended further proceedings in the case until such time as answers to the interrogatories of the board will have been received.

NAVAL EXAMINING BOARD,
Washington, November 8, 1877.

The board met this day at 11 o'clock a. m., pursuant to the adjournment of yesterday. Present, all the members of the board and the recorder. Capt. Somerville Nicholson, United States Navy, was also present.

The answers of officers to the interrogatories addressed to them by the board, as requested by Captain Nicholson, having been received, the board resumed consideration of that officer's case.

The interrogatories of the board and answers thereto of officers were read in evidence, and are annexed hereto, and marked K, L, M, N, O, P, and Q.

The board then proceeded with the professional examination in the case.

Captain Nicholson was examined in international law, fleet tactics, and duties of the next higher grade, and found professionally qualified for promotion.

The board then considered the testimony in the case.

Captain Nicholson submitted a written communication to the board, requesting that certain gentlemen, residents of the District of Columbia, be summoned to testify to his character as an officer and gentleman for the last four years.

The board was then cleared, and, after full consideration, decided to grant Captain Nicholson's request.

The written communication is hereto appended, and marked R.

Captain Nicholson stated to the board that it would not be necessary to issue formal summons on the gentlemen requested to appear as witnesses in his case, as he would request them to be present at the proper time.

A board of medical examiners having examined and pronounced Captain Nicholson physically qualified to perform all his duties at sea, the report of that board was received and read aloud, and hereto annexed, and marked B. M. E.

A record of service of Captain Nicholson since appointment as acting midshipman, 21st June, 1839, having been submitted to the board by him, and it being duly sworn to, was read in evidence, and marked Exhibit S. N.

The board then postponed the further consideration of the case until to-morrow, the 9th instant, at 11 o'clock a. m., to which time it then adjourned.

NAVAL EXAMINING BOARD,
Washington, November 9, 1877.

The board met pursuant to adjournment. Present, all the members and the recorder. Capt. Somerville Nicholson was also present.

The record of the proceedings of the board of October 16 and of 8th instant, in the case of Captain Nicholson, was read and approved. The board then resumed consideration of the case.

Mr. W. W. CORCORAN, being present, was called as a witness in the case, and, being duly sworn, testified as follows:

Question. Please state your name and residence.—Answer. W. W. Corcoran, Washington, D. C.

Q. Please state how long you have known Captain Nicholson, and what opportunities you have had of judging of his character.—A. I have known Captain Nicholson about twenty-five years. He married my niece. An intimacy between us during that time has given me opportunities of judging of his character.

Q. From your personal knowledge, do you consider that Captain Nicholson has habits of intemperance that unfit him for the position of commodore in the Navy?—A. I would say that for the last four or five years Captain Nicholson has come under my personal observation. I have generally seen him, as often as four or five times a week at my house, and his conduct has been highly commendable. I have never seen him, in the slightest degree, under the influence of liquor, and he has shown no evidence whatever that he has habits of intemperance.

There being no further questions to ask the witness, the testimony was then read over to him, and by him pronounced correct as recorded.

Hon. H. D. COOKE was then called as a witness, and that gentleman appearing, was duly sworn and testified as follows:

Question. Please state your name and residence.—Answer. H. D. Cooke, Georgetown, D. C.

Q. Please state how long you have known Captain Nicholson, and what opportunities you have had of judging of his character.—A. I have known Captain Nicholson six or seven years, about the last four years of which time he has lived next door to me in Georgetown. I have seen him daily, and there has been a good deal of intercourse between our families and ourselves.

Q. From your personal knowledge, do you consider that Captain Nicholson has habits of intemperance that unfit him for the position of commodore in the Navy?—A. From personal knowledge I do not. On the contrary, all that I know of him will justify my opinion that his habits are exemplary and unexceptionable in that particular.

The testimony of the witness, being concluded, was then read over to him, and by him pronounced correct.

General GEORGE C. THOMAS, being present, was next called as a witness, and being duly sworn, testified as follows:

Question. Please state your name, rank, and residence.—Answer. George C. Thomas, major-general, commanding District of Columbia. I have been connected with the War Department and the Army forty-five years, and am a graduate of West Point, and reside in Georgetown, D. C.

Q. Please state how long you have known Captain Nicholson, and what opportunity you have had of judging of his character?—A. I have known Captain Nicholson upwards of thirty years, and have had every opportunity of judging of his character during the whole time, and especially the last four years as neighbors and frequent visitors in Georgetown.

Q. From your personal knowledge, do you consider that Captain Nicholson has habits of intemperance that unfit him for the position of commodore in the Navy?—A. Not in the least.

There being no further questions to ask the witness, his testimony as recorded was then read over to him, and by him pronounced correct.

General W. D. WHIPPLE, being called, appeared as a witness in the case, and, being duly sworn, testified as follows:

Question. Please state your name, rank, and present duty.—Answer. W. D. Whipple; colonel and aid-de-camp, United States Army, and brevet major-general; on duty at headquarters.

Q. Please state how long you have known Captain Nicholson, and what opportunity you have had of judging of his character.—A. I have known Captain Nicholson about three years; live near him in Georgetown; have frequently met him at his own house and at my house, and elsewhere about town.

Q. From your personal knowledge, do you consider that Captain Nicholson has habits of intemperance that unfit him for the position of commodore in the Navy?—A. From my personal knowledge, I consider that he has not habits that unfit him for promotion or for the position of commodore in the Navy.

The testimony of General Whipple being concluded, it was read over to him, and by him pronounced correct.

General L. H. PELOUZE was next called as a witness, and, being duly sworn, testified as follows:

Question. Please state your name, rank, and present duty.—Answer. Louis H. Pelouze; major and assistant adjutant-general, United States Army; and at present on duty in the War Department.

Q. Please state how long you have known Captain Nicholson, and what opportunity you have had of judging of his character.—A. I have known Captain Nicholson since some time in the fall of 1876. We have met frequently in Georgetown and in this city.

Q. From your personal knowledge do you consider that Captain Nicholson has habits of intemperance that unfit him for the position of commodore in the Navy?—A. From my personal knowledge he has not such habits.

The testimony of the witness being concluded, was read over to him, and by him pronounced correct as recorded.

The board being cleared, Captain Nicholson then requested permission to prepare and submit to the board a written statement in reply to certain testimony of officers in his case, and that he be allowed until Monday next to make such statement.

The board granted the request of Captain Nicholson, and postponed the further consideration of his case until Tuesday next, the 13th instant, at 11 o'clock a. m., to which time it then adjourned.

NAVAL EXAMINING BOARD,
Washington, November 13, 1877.

The board met pursuant to adjournment. Present, all the members and the Recorder. Captain Nicholson was also present.

The record of the proceedings of the 9th instant was read and approved.

The board then resumed consideration of the case of Captain Nicholson.

The written statement of Captain Nicholson, in answer to certain testimony of officers in his case, was then read aloud by him, and, being duly sworn to, was received in evidence, and is annexed to this record and marked S.

The board considered the sworn statement of Captain Nicholson, and after consider-

ation took up the case of Master J. W. Graydon, U. S. N., who appeared before the board for examination for promotion, in obedience to an order.

The board then adjourned to meet at 11 o'clock a. m. to-morrow.

NAVAL EXAMINING BOARD,
Washington, November 14, 1877.

The board met pursuant to adjournment. Present, all the members and the recorder. The record of the proceedings of yesterday was read and approved.

The board having completed the examination in the case of Master Graydon, and having received, from the files of the department, record of the proceedings of a naval general court-martial convened on board the United States steamer Congress, Key West, Fla., in the case of Captain Nicholson, and also record of the proceedings of a naval board of inquiry held on board the United States steamer Benicia, Asiatic squadron, under date 13th September, 1870, the recorder of the board was directed to inform Captain Nicholson that, under section 1499 of the Revised Statutes, certain documentary matter furnished the board from the files of the department would be considered in connection with his examination for promotion, and to notify that officer to appear before the board without delay.

A copy of the letter of the president of the board requesting official papers on file in the case of Captain Nicholson, the letter of the department in answer thereto, and also the letter of notice of the board to Captain Nicholson to appear, are annexed to this record, and marked T, U, and V.

The board then examined the aforesaid records, and, Captain Nicholson not appearing, it adjourned to meet at 10½ o'clock a. m. to-morrow, the 15th instant.

NAVAL EXAMINING BOARD,
November 15, 1877.

The board met pursuant to adjournment. Present, all the members and the recorder. Captain Nicholson was also present.

The record of the proceedings of yesterday was read and approved.

The board then resumed consideration of the case of Captain Nicholson.

Captain Nicholson submitted to the board a written statement, in which that officer asks ample time may be given him to thoroughly examine all the documentary matter before it, and requests that he may be allowed until 1 p. m. on Monday next to prepare and present a statement in reply thereto.

The statement was received and considered, and is appended hereto, and marked W.

The board granted Captain Nicholson's request, and gave him permission to examine the documentary matter before it, and thereupon adjourned until Tuesday next, the 20th instant, at 11 o'clock a. m.

NAVAL EXAMINING BOARD,
Washington, November 20, 1877.

The board met pursuant to adjournment. Present, all the members, the recorder, and Capt. S. Nicholson.

The record of the proceedings of the 15th instant was read and approved.

Captain Nicholson then read aloud a written statement, prepared by him, in answer to the documentary matter furnished the board from the files of the department. The statement of Captain Nicholson, being sworn to, was received in evidence, and is annexed hereto, and marked X.

The president of the board then discharged Captain Nicholson from further attendance upon the board.

The board then proceeded to deliberate upon the evidence in the case hereto annexed, and marked as aforesaid, and also upon the professional examination herein stated, and decided thereon that Captain Nicholson possesses in a high degree the mental and professional qualifications to perform efficiently all the duties of a naval officer at sea in the next higher grade.

The board further find that Captain Nicholson has failed to establish his moral fitness to the satisfaction of the board; and we do not therefore recommend him for promotion.

S. C. ROWAN,
Vice-Admiral and President.
GEORGE B. BALCH,
Commodore.

Minority report.

While concurring with the majority of the board as to the mental and professional of Captain Nicholson, I am of opinion that the evidence in the case establishes that officer's moral fitness, and do therefore recommend him for promotion.

C. H. BALDWIN,
Commodore.

The record of the proceedings of a naval general court-martial and the record of a naval court of inquiry in the case of Captain Nicholson, furnished the board from the files of the department, are returned with this record to the department.

JAMES C. DULIN,
Recorder.

A.

NAVY DEPARTMENT,
Washington, October 13, 1877.

SIR: A naval examining board for the examination of such officers as may be notified to appear before it as candidates for promotion is hereby ordered to convene at this department on Thursday, the 15th day of October instant, at noon.

The board will consist of yourself, as senior member and president, and of Commodores G. B. Balch and C. H. Baldwin, as members. Mr. James C. Dulin will act as recorder.

The board will be organized anew in each case, as follows, viz: The senior member will swear the recorder to the faithful performance of his duty as recorder. The recorder will then swear the members of the board faithfully and impartially to examine and report upon the candidate about to be examined.

A copy of this order, and of all orders addressed by the department to any member of the board, or to the recorder, and also the original, or a copy, of every record or paper used in the case for any purpose, must be attached to the record of that case.

No fact which occurred prior to the last examination of the candidate must, for any purpose, be inquired into, or considered, in any case, and the record must show, as fully as may be practicable, everything which assisted the board in forming its opinion.

The board will by vote designate the officers to whom interrogatories shall, in any case, be forwarded for answers as to the mental, moral, or professional fitness for promotion of the candidate.

No such interrogatory, nor any question to any witness, shall, without the consent of the candidate, refer to a time prior to his last promotion, nor shall an inquiry as to matters of opinion be proposed to any officer who is his junior in rank.

Such witnesses as the candidate may reasonably request to have examined upon written interrogatories, or orally, under oath, administered by the senior member, shall be examined. Whenever such request is, by the board, deemed unreasonable, it shall at once be referred to the Secretary of the Navy for decision.

Each record must be signed by every member, and by the recorder, and must show who of the members concurred in, and who, if any, dissented from, the opinion of the board.

Whenever the board fails to recommend a candidate for promotion, the records will state whether such failure is owing to his moral, mental, or professional unfitness for promotion.

Very respectfully, yours,

R. W. THOMPSON,
Secretary of the Navy.

Vice-Admiral S. C. ROWAN,
Washington, D. C.

A copy.
JAMES C. DULIN, *Recorder.*

B.

NAVY DEPARTMENT,
BUREAU OF NAVIGATION AND OFFICE OF DETAIL,
Washington, 15th, 1877.

SIR: Report to Vice-Admiral Rowan on the 16th instant, for the required examinations, preliminary to promotion, by a board of which he is president.

By direction of the Secretary.

Respectfully,

DAN'L AMMEN,
Chief of Bureau.

Capt. SOMERVILLE NICHOLSON, U. S. N.,
Georgetown, D. C.

A true copy.
JAMES C. DULIN, *Recorder.*

C.

Interrogatories addressed to Rear-Admiral John Rodgers, U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Captain Nicholson?

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; and did he perform his duty in an efficient manner?—A. He served a short time under my command, he being captain of the Benicia and I commander-in-chief on board the Colorado.

No. 3. In your association with Captain Nicholson, do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?—A. I do not know of any personally, but I believe he [is] reputed an intemperate man.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson, do you or not consider him mentally qualified for promotion?—A. I do.

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Nicholson professionally qualified for promotion?—A. I think he is professionally qualified.

No. 6. What is the general reputation of Captain Nicholson in the Navy as an officer and gentleman?—A. Aside from reputed intemperance, I think it is good.

No. 7. Would you, as commander of a squadron, have sufficient confidence in Captain Nicholson to send him on an important separate service in command of a vessel of war?—A. Aside from reputed intemperance, I would.

No. 8. Do you or not consider Captain Nicholson to be mentally, morally, and professionally a fit officer to perform all his duties at sea in a higher grade?—A. Aside from reputed intemperance, I do so consider him.

JOHN RODGERS,

Rear-Admiral, United States Navy.

Witnesses:

GEO. W. PIGMAN, *Lieutenant-Commander.*

GEORGE E. IDE, *Lieutenant.*

D.

Interrogatories addressed to Rear-Admiral A. Ludlow Case, U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Capt. Somerville Nicholson?—A. Many years.

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; and did he perform his duty in an efficient manner?—A. Yes; in the combined fleet under my command at Key West, 1874, in command of the Lancaster; was obliged to relieve him in the command for intemperance.

No. 3. In your association with Captain Nicholson, do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?—A. I have reason "to believe him given to habits of intemperance" at times.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson, do you or not consider him mentally qualified for promotion?—A. I do.

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Nicholson professionally qualified for promotion?—A. I do.

No. 6. What is the general reputation of Captain Nicholson in the Navy as an officer and gentleman?—A. Good.

No. 7. Would you, as commander of a squadron, have sufficient confidence in Captain Nicholson to send him on an important separate service in command of a vessel of war?—A. No, for the reasons stated in Nos. 2 and 3.

No. 8. Do you or not consider Captain Nicholson to be mentally, morally, and pro-

professionally a fit officer to perform all his duties at sea in a higher grade?—A. Yes, with the exceptions stated in Nos. 2 and 3.

A. LUDLOW CASE,
Rear-Admiral, United States Navy.

Subscribed and sworn before me this 6th day of October, 1877.

D. A. LISK, *Notary Public.*

E.

Interrogatories addressed to Commodore J. W. A. Nicholson, U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Captain Nicholson?—A. About thirty-five years.

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; and did he perform his duty in an efficient manner?—A. Year 1842; Mediterranean squadron; as midshipmen together.

No. 3. In your association with Captain Nicholson, do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?—A. Have seen him intoxicated more than once.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson, do you or not consider him mentally qualified for promotion?—A. Yes.

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Nicholson professionally qualified for promotion?—A. Yes.

No. 6. What is the general reputation of Captain Nicholson in the Navy as an officer and gentleman?—A. Cannot say, for I do not know.

No. 7. Would you, as commander of a squadron, have sufficient confidence in Captain Nicholson to send him on an important separate service in command of a vessel of war?—A. No.

No. 8. Do you or not consider Captain Nicholson to be mentally, morally, and professionally a fit officer to perform all his duties at sea in a higher grade?—A. Mentally and professionally, yes; morally, no.

J. W. A. NICHOLSON,
Commodore, United States Navy.

Signed in presence of—

WM. G. TEMPLE, *Captain, United States Navy.*

C. S. COTTON, *Commander, United States Navy.*

F.

Interrogatories addressed to Commodore Geo. H. Cooper, U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Captain Nicholson?—A. Since 1839.

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; and did he perform his duty in an efficient manner?—A. Served in the Japan squadron together, under Commodore M. C. Perry; was considered an efficient officer. We were lieutenants at the time. Have never served on board the same ship with him.

No. 3. In your association with Captain Nicholson, do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?—A. Am not sufficiently well acquainted with him to express an opinion, as upward of thirty years have elapsed since we were in Japan. Since then I have seen him but seldom.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson, do you or not consider him mentally qualified for promotion?

No. 5. From the services you have performed together, and from your knowledge of

his professional attainments, do you or not consider Captain Nicholson professionally qualified for promotion?—A. As above.

No. 6. What is the general reputation of Captain Nicholson in the Navy as an officer and gentleman?—A. As above.

No. 7. Would you, as commander of a squadron, have sufficient confidence in Captain Nicholson to send him on an important separate service in command of a vessel of war?—A. As above.

No. 8. Do you or not consider Captain Nicholson to be mentally, morally, and professionally a fit officer to perform all his duties at sea in a higher grade?—A. As above.

G. H. COOPER,

Commodore, United States Navy.

Sworn to before me the 3d day of October, 1877.

HENRY W. ROZELL,
Notary Public.

G.

Interrogatories addressed to Commodore A. C. Rhind, U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Captain Nicholson?—A. Over thirty years.

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; and did he perform his duty in an efficient manner?—A. Do not remember, except that we were together as midshipmen at the Naval School at Philadelphia, and met at Key West in 1874, he being in command of the Lancaster.

No. 3. In your association with Captain Nicholson do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?—A. I know that Captain Nicholson has at times overindulged in wine or spirits, but do not believe him to be habitually intemperate.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson, do you or not consider him mentally qualified for promotion?—A. I do.

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Nicholson professionally qualified for promotion?—A. I consider him professionally qualified.

No. 6. What is the general reputation of Captain Nicholson in the Navy as an officer and gentleman?—A. I believe it good.

No. 7. Would you, as commander of a squadron, have sufficient confidence in Captain Nicholson to send him on an important separate service in command of a vessel of war?—A. I could not decide that question until the occasion arose.

No. 8. Do you or not consider Captain Nicholson to be mentally, morally, and professionally a fit officer to perform all his duties at sea in a higher grade?—A. I do, with the exception of his occasional overindulgence in wine or spirits, and in that matter as much qualified as some others who have passed the ordeal of examination.

A. C. RHIND, *Commodore.*

H.

Interrogatories addressed to Commodore George M. Ransom, U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Capt. Somerville Nicholson?—A. About thirty-three years.

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; and did he perform his duty in an efficient manner?—A. Served together in the North Atlantic squadron several months in 1864, he in command of the United States steamer State of Georgia, and

again several months in the North Atlantic squadron in 1874, he in command of the United States steamer Lancaster, and did apparently perform his duties in an efficient manner.

No. 3. In your association with Captain Nicholson do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?—A. I have reason to believe, not from personal knowledge, but only from common report, that he has been given to habits of intemperance.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson, do you or not consider him mentally qualified for promotion?—A. I do.

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Nicholson professionally qualified for promotion?—A. I do.

No. 6. What is the general reputation of Captain Nicholson in the Navy as an officer and gentleman?—A. Unexceptionable, otherwise than his habits of intemperance.

No. 7. Would you, as commander of a squadron, have sufficient confidence in Captain Nicholson to send him on an important separate service in command of a vessel of war?—A. No.

No. 8. Do you or not consider Captain Nicholson to be mentally, morally, and professionally a fit officer to perform all his duties at sea in a higher grade?—A. Mentally and professionally, I do. I know nothing against his moral character.

GEO. M. RANSOM,

Commodore, United States Navy.

Witnesses:

R. H. WYMAN, *Commodore, United States Navy.*

J. C. HOWELL, *Rear-Admiral.*

I.

Interrogatories addressed to William F. Spicer, commodore U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Captain Nicholson?—Answer. Since 1844.

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; did he perform his duty in an efficient manner?—A. We were in class together at the Naval School, Philadelphia. Never met on other service.

No. 3. In your association with Captain Nicholson, do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?—A. I have reason to believe that he has been given to habits of intemperance.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson, do you or not consider him mentally qualified for promotion?—A. I do.

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Nicholson professionally qualified for promotion?—A. I do.

No. 6. What is the general reputation of Captain Nicholson in the Navy as an officer and gentleman?—A. Don't remember to have heard his general reputation discussed; so far as I know, a competent officer and a gentleman.

No. 7. Would you, as a commander of a squadron, have sufficient confidence in Captain Nicholson to send him on an important separate service in command of a vessel of war?—A. It would require some degree of association on duty to answer this question positively. If it rested solely on my idea of his intelligence and ability as an officer, I should not hesitate to so employ him.

No. 8. Do you or not consider Captain Nicholson to be mentally, morally, and professionally a fit officer to perform all his duties at sea in a higher grade?—A. Mentally and professionally, yes.

WM. F. SPICER,

Commodore, United States Navy.

STATE OF MASSACHUSETTS,

City of Boston, County of Suffolk, ss :

On the sixth day of October, then and there personally appeared William F. Spicer,

to me personally known, and made oath that the matters therein set forth in the foregoing answers to the within interrogatories by him subscribed were true. Before me.

JAS. B. BELL,
Notary Public and Justice of the Peace.

J.

WASHINGTON, October 17, 1877.

SIR: I respectfully request that interrogatories may be sent to the following officers, viz: Rear-Admiral J. H. Strong, Newberg, N. Y.; Rear-Admiral A. Murray, San Francisco, Cal.; Commodore John Guest, Portsmouth, N. H.; Commodore Foxhall Parker, Chester, Pa.; Commodore Thomas H. Stevens, Norfolk; Medical Inspector W. T. Hord, Boston navy-yard; Chaplain F. B. Rose, United States steamer Pensacola.

Very respectfully,

S. NICHOLSON,
Captain, United States Navy.

Vice-Admiral S. C. ROWAN,
President Examining Board.

K.

Interrogatories addressed to Rear-Admiral James H. Strong, U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Capt. S. Nicholson?—A. Knew him first in 1842-'43.

No. 2. Has Capt. S. Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; and did he perform his duty in an efficient manner?—A. Yes; as my commander of my flagship, South American station, for some three months. He performed his duty in a perfectly satisfactory manner.

No. 3. In your association with Captain Nicholson, do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?—A. Of my own knowledge I know nothing to unqualify him for promotion. I have never seen him intoxicated.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson, do you or not consider him mentally qualified for promotion?—A. While under my command he performed his duties to my entire satisfaction.

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Nicholson professionally qualified for promotion?—A. I do.

No. 6. What is the general reputation of Captain Nicholson in the Navy as an officer and gentleman?—A. He has had the reputation of being dissipated, but I have never seen anything of it myself.

No. 7. Would you, as commander of a squadron, have sufficient confidence in Captain Nicholson to send him on an important separate service in command of a vessel of war?—A. I have not been long enough associated with him on duty to be able to answer.

No. 8. Do you or not consider Captain Nicholson to be mentally, morally, and professionally a fit officer to perform all his duties at sea in a higher grade?—A. So far as I personally know, he is. In my answers I have been governed solely by my personal knowledge and not by hearsay or reports.

J. H. STRONG,
Rear-Admiral, United States Navy.

L.

Interrogatories addressed to Rear-Admiral Alexander Murray, U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Capt. S. Nicholson?—A. About thirty years.

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; and did he perform his duty in an efficient manner?—A. North Atlantic squadron, in command of gunboat. He performed his duty with efficiency and ability.

No. 3. In your association with Captain Nicholson, do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?—A. I have seen him under the influence of liquor, but I do not think him disqualified.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson, do you or not consider him mentally qualified for promotion?—A. Yes; I do.

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Nicholson professionally qualified for promotion?—A. I do.

No. 6. What is the general reputation of Captain Nicholson in the Navy as an officer and gentleman?—A. First-rate.

No. 7. Would you, as commander of a squadron, have sufficient confidence in Captain Nicholson to send him on an important separate service in command of a vessel of war?—A. Yes.

No. 8. Do you or not consider Captain Nicholson to be mentally, morally, and professionally a fit officer to perform all his duties at sea in a higher grade?—A. Yes.

A. MURRAY,

Rear-Admiral, United States Navy.

Witness:

J. H. SPOTTS, *Commodore.*

H. C. NELSON, *Surgeon.*

M.

Interrogatories addressed to Commodore Thomas H. Stevens, U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Capt. S. Nicholson?—A. Since his childhood.

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; and did he perform his duty in an efficient manner?—A. Captain Nicholson served with me when I commanded an expedition up the Pamunkey River, in May, 1862, to open the way for McClellan's advance to Richmond, and to protect a cavalry detachment near the White House. Captain Nicholson's services were of great value and most efficient. He commanded the Marblehead at the time and very ably.

No. 3. In your association with Captain Nicholson, do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?—A. In my official association with Captain Nicholson, to which I presume these questions refer, my reply is in the negative to both interrogatories.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson, do you or not consider him mentally qualified for promotion?—A. I consider Captain Nicholson, on the score of general intelligence and ability, one of the first officers in the Navy.

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Nicholson professionally qualified for promotion?—A. Captain Nicholson's professional attainments are of a high order, and fully qualify him for promotion.

No. 6. What is the general reputation of Captain Nicholson in the Navy as an officer and gentleman?—A. I know him to be a thoroughly competent and gallant officer, and an accomplished gentleman, and such is the estimate of his brother officers.

No. 7. Would you, as commander of a squadron, have sufficient confidence in Captain Nicholson to send him on an important separate service in command of a vessel of

war?—A. Yes; and would feel, if the occasion were one of peril, where nerve and dash were essentially required, it could not be in better hands.

No. 8. Do you or not consider Captain Nicholson to be mentally, morally, and professionally a fit officer to perform all his duties at sea in a higher grade?—A. Yes.

T. H. STEVENS,

Commodore, United States Navy.

Witness:

GEO. R. BOUSH, *Naval Constructor, U. S. N.*

W. A. H. ALLEN, *Past Assistant Engineer, U. S. N.*

N.

Interrogatories addressed to Commodore Foxhall A. Parker, U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Capt. S. Nicholson?—A. Since our boyhood.

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; and did he perform his duty in an efficient manner?—A. We served together about two months in the Bay of Florida in 1873, he in command of the *Lancaster*, I as "chief of staff of the united fleets," commanded by Rear-Admiral Case. He performed his duties as a divisional commander remarkably well.

No. 3. In your association with Captain Nicholson, do you or not know of his having habits which render him unqualified for promotion, or have you any reason to believe him given to habits of intemperance?—A. I have no reason to believe him given to bad habits. He was tried on a charge of intoxication aboard the *Lancaster*, but I have never heard the result of the trial.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson, do you or not consider him mentally qualified for promotion?—A. I consider him mentally qualified.

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Nicholson professionally qualified for promotion?—A. I consider him professionally qualified.

No. 6. What is the general reputation of Captain Nicholson in the Navy as an officer and gentleman?—A. He is considered a thorough gentleman. Rumor says his character as an officer is injured by habits of intemperance.

No. 7. Would you, as commander of a squadron, have sufficient confidence in Captain Nicholson to send him on an important separate service in command of a vessel of war?—A. As far as my own personal knowledge of him goes, yes.

No. 8. Do you or not consider Captain Nicholson to be mentally, morally, and professionally a fit officer to perform all his duties at sea in a higher grade?—A. As far as my own personal knowledge of him goes, yes.

FOXHALL A. PARKER,

Commodore, United States Navy.

Witnesses:

E. Y. McCauley, *Captain, United States Navy.*

B. B. TAYLOR, *Commander, United States Navy.*

O.

Interrogatories addressed to Commodore John Guest, U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Capt. S. Nicholson?—A. From boyhood.

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; and did he perform his duty in an efficient manner?—A. In China and Japan, under Commodore Perry; in the same squadron, but not in the same vessel. He was distinguished for efficiency.

No. 3. In your association with Captain Nicholson do you or not know of his hav-

ing habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?—A. I do not consider that he has habits which disqualify him for promotion. In social life he is a free-liver.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson, do you or not consider him mentally qualified for promotion?—A. Decidedly, yes.

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Nicholson professionally qualified for promotion?—A. Eminently so.

No. 6. What is the general reputation of Captain Nicholson in the Navy as an officer and a gentleman?—A. Excellent; of high tone.

No. 7. Would you, as commander of a squadron, have sufficient confidence in Captain Nicholson to send him on an important separate service in command of a vessel of war?—A. I would with perfect confidence.

No. 8. Do you or not consider Captain Nicholson to be mentally, morally, and professionally a fit officer to perform all his duties at sea in a higher grade?—A. I do.

JOHN GUEST,

Commodore, United States Navy.

Witnesses:

EARL ENGLISH, *Captain, United States Navy.*

HENRY ERBEN, *Commander, United States Navy.*

P.

Interrogatories addressed to Medical-Inspector William T. Hord, U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a board in session at Washington, D. C., by order of the honorable Secretary of the Navy, in accordance with Title XV, chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Capt. S. Nicholson?—A. Since 1873.

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity.—A. In 1873; on the Brazil station; and as captain of the Lancaster.

No. 3. In your association with Captain Nicholson do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?—A. I know of no habits which disqualify him for promotion. I never saw him intoxicated while on board ship. Subsequent to sailing with him I met him nearly every day for two years, at Georgetown, where we both resided, and never knew him to be intoxicated.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson do you or not consider him mentally qualified for promotion?—A. I do.

No. 6. What is the general reputation of Captain Nicholson in the Navy as an officer and a gentleman?—A. Excellent.

No. 8. Do you or not consider Captain Nicholson to be mentally and morally a fit officer to perform all his duties at sea in a higher grade?—A. I do.

WM. T. HORD,

Medical Inspector, United States Navy.

Witnesses:

FRANCIS H. SWAN, *Paymaster, United States Navy.*

D. DICKINSON, *Passed Assistant Surgeon, U. S. N.*

Q.

Interrogatories addressed to Chaplain Frank B. Rose, U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a board in session at Washington, D. C., by order of the honorable Secretary of the Navy, in accordance with Title XV, chapter 4, Revised Statutes of the United States:

No. 1. How long have you known Capt. S. Nicholson?—A. I first met him in the year 1873.

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity.—A. Yes; in the year 1873, from Rio de Janeiro to the United States. Captain Nicholson commanded the United States ship Lancaster (2d rate) at that time.

No. 3. In your association with Captain Nicholson do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?—A. In my personal association with him I observed no habits that were not praiseworthy. I have heard a large amount of diametrically opposite testimony on the subject of his habits for temperance, and cannot sift the chaff from the wheat so as to form a safe judgment.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson, do you or not consider him mentally qualified for promotion?—A. No one can question the intelligence of Captain Nicholson. He is a remarkably clear-headed officer. I judge him to be mentally as qualified for commodore as he is for the position of captain.

No. 6. What is the general reputation of Captain Nicholson in the Navy as an officer and gentleman?—A. I have never heard any one deny that Captain Nicholson was a perfect gentleman. My acquaintance with his acquaintances is too limited to enable me wisely to declare his general reputation as an officer.

No. 8. Do you or not consider Captain Nicholson to be mentally and morally a fit officer to perform all his duties at sea in a higher grade?—A. As I have said in answer to fourth interrogatory, I do consider him to be mentally qualified. Upon the subject of moral qualification my answer would be the same but for conflicting testimony I have heard upon the subject of his habits of intemperance. I cannot more fully answer the question.

FRANK B. ROSE,
Captain, United States Navy.

Witnesses:

H. C. NELSON, *Surgeon, United States Navy.*

W. S. STAMM, *Chief Engineer, United States Navy.*

R.

WASHINGTON, D. C., November 8, 1877.

SIR: Understanding that the present as well as the late Secretary of the Navy have decided that character subsequent to acts alleged to have been committed must be given due weight before an officer can be adjudged unfitted for promotion to a higher grade, I respectfully request that the following-named gentlemen, residents of this District, may be summoned to testify to my character as an officer and a gentleman for the last four years: Ex-Governor H. D. Cooke, Georgetown, D. C.; General George C. Thomas, Georgetown, D. C.; Judge John J. Key, Georgetown, D. C.; Maj. Gen. William D. Whipple, U. S. A., Washington, D. C.; General L. H. Pelouze, U. S. A., Washington, D. C.; W. W. Corcoran, esq., Dr. J. G. Blake.

Very respectfully, your obedient servant,

S. NICHOLSON,
Captain, United States Navy.

Vice-Admiral S. C. ROWAN, U. S. N.,

President Naval Board of Examiners, Washington, D. C.

B. M. E.

NAVY DEPARTMENT,
Washington, D. C., October 16, 1877.

SIR: We have examined Somerville Nicholson, captain, United States Navy, and find him physically qualified to perform all his duties at sea.

Respectfully,

THOMAS J. TURNER,
Medical Inspector, United States Navy.
RICHARD C. DEAN,
Medical Inspector, United States Navy.
B. F. GIBBS,
Medical Inspector, United States Navy.

Hon. R. W. THOMPSON,
Secretary of the Navy.

Respectfully referred to the Board of Examiners by direction of the Secretary.
JNO. W. HOGG, *Chief Clerk.*

A.

NAVY DEPARTMENT,
Washington, October 15, 1877.

SIR: A Board of Medical Examiners to determine the physical qualifications of such officers as may, by the Secretary of the Navy, be notified to appear before it as candidates for promotion, is hereby ordered to convene at this department on Monday, the 15th day of October, instant, at noon.

The board will consist of yourself, as senior member and president, and of Medical Inspectors R. C. Dean and B. F. Gibbs as members.

The result of the examination in each case will be reported, separately, to the Secretary of the Navy.

Very respectfully, yours,

R. W. THOMPSON,
Secretary of the Navy.

Medical Inspector THOMAS J. TURNER, U. S. N.,
Washington, D. C.

A true copy:

T. J. TURNER,
Medical Inspector, United States Navy.

B.

NAVY DEPARTMENT,
BUREAU OF NAVIGATION AND OFFICE OF DETAIL,
Washington, October 16, 1877.

SIR: The Board of Medical Examiners, of which you are president, will take up the case of Capt. Somerville Nicholson, as to his physical qualifications to perform all his duties at sea.

By direction of the Secretary.

Respectfully,

DAN'L AMMEN,
Chief of Bureau.

Medical Inspector THOMAS J. TURNER, U. S. N.,
Navy Department.

Received October 16, 1877.

C.

BOARD OF MEDICAL EXAMINERS, NAVY DEPARTMENT,
Washington, D. C., October 16, 1877.

I hereby certify on honor that I am, to the best of my knowledge and belief, free from all bodily ailments; that I am physically qualified to perform all the duties of a naval officer at sea.

S. NICHOLSON,
Captain, United States Navy.

S. N.

Record of service of Capt. S. Nicholson, U. S. N.

June 21, 1839.—Appointed acting midshipman.

July 9, 1839, to July 31, 1842.—Served on board the United States frigate Brandywine, Mediterranean.

February 1, 1843, to January 29, 1844.—Served on board United States brig Truxton,

bringing the remains of Commodore D. D. Porter from Constantinople to the United States.

March 11, 1844, to April 13, 1844.—On board the United States ship Princeton.

August 29, 1844.—Ordered to Naval School, Philadelphia.

May, 1845.—Passed my examination.

June 1845, to January 21, 1848.—On coast survey duty.

January 21, 1848, to June 4, 1849.—Acting master on board United States ship Alleghany, Brazil and Mediterranean stations.

August 17, 1849, to October 8, 1852.—On coast survey duty.

October 8, 1852, to April 25, 1855.—Served as acting master and lieutenant on board the United States ships Powhatan and Mississippi, attached to Commodore Perry's Japan expedition.

May 5, 1854.—Commissioned lieutenant.

June 10, 1856, to April 30, 1857.—On ordnance duty, Washington navy-yard.

April 12, 1857, to September 3, 1859.—On board the United States ship Cumberland, African station.

October 29, 1859, to December 5, 1860.—On ordnance duty, Washington navy-yard.

December 5, 1860, to January 2, 1862.—On board United States ship Macedonian, Gulf of Mexico and home station.

January 10, 1862, to December 26, 1862.—In command of United States steamer Marblehead, co-operating with McClellan's army, York and Pamunkey Rivers, and blockading duty off Charleston.

July 16, 1862.—Promoted to lieutenant-commander.

January 2, 1863.—Promoted to commander.

June 1, 1863, to October 20, 1863.—In command of iron-clad Sangamon, James River.

November 3, 1863, to November 9, 1864.—In command of United States steamer State of Georgia, on blockade duty off Wilmington.

November 9, 1864, to July 3, 1865.—In command of United States steamer Galatea, convoy duty West Indies.

August 21, 1865, to September 27, 1866.—Special duty, Washington navy-yard.

September 27, 1866, to October 1, 1868.—As assistant to executive officer Washington navy-yard.

February 23, 1869, to October 31, 1869.—Member of ordnance board, Washington, D. C.

November 1, 1869, to October 9, 1870.—Command of United States steamer Benicia, Asiatic squadron.

April 6, 1871, to December 1, 1871.—Member of special board, Washington navy-yard.

August 15, 1873, to February 24, 1874.—In command of flag-ship Lancaster, South Atlantic station, and drill squadron, Florida Bay.

November 27, 1874.—Suspended from duty by sentence of court-martial for six years on furlough pay from April, 1874.

June 1, 1875.—Secretary of the Navy remitted that part of the sentence placing me on furlough pay.

October 3, 1876.—Secretary of the Navy revoked the unexpired portion of the sentence. Since the last date I have been unemployed.

My record thus shows that up to the time of my court-martial, I had been thirty-five years and two months in the service. Seventeen years and eight months sea service; shore or other duty, eleven years and eight months; unemployed five years and ten months.

Respectfully submitted,

S. NICHOLSON,
Captain, United States Navy.

S.

WASHINGTON, D. C., November 13, 1877.

GENTLEMEN: Pursuant to the order of the Navy Department, I have appeared before your Board for promotion to the position of commodore, United States Navy, I being the senior captain on the active list, agreeably to the provisions of section 1496 Revised Statutes of the United States, which prescribes, before such promotion is made, the mental, moral, and professional fitness of the applicant to perform all his duties at sea shall be determined to the satisfaction of an examining board.

The order of the department pursuant to which you are acting prescribes that the members comprising this Board shall be duly sworn to faithfully and impartially examine and report upon the candidate for promotion.

2d. That no fact which occurred *prior* to his last examination for promotion must for any purpose be inquired into or considered.

3d. That no interrogatory or question to any witness shall, without the consent of the candidate, refer to a time *prior* to his last promotion.

4th. That the record as made by the Board, in relation to his case, must show everything, as fully as may be practicable, which assisted the Board in forming its opinion as to the fitness of the officer for promotion.

For a proper consideration of my case, I have thus referred to the law pursuant to which the Board has been organized, as also to the rules prescribed by the department for its action, and, as your functions are of a judicial character, it is alone upon legal evidence presented that my case is to be determined, and therefore, having the greatest confidence in the several members sitting in judgment upon my case, I feel every assurance that there will be no prejudice involved, and that no impression on the mind of either member of the Board, based upon unofficial statements made, or the opinion of others heretofore expressed, will have the slightest weight in influencing their action, and that, by divesting their minds of any and all personal feelings, they will conclude my case alone upon the legal evidence submitted for their consideration.

With the exception of this, my statements under oath, the testimony in my case on the part of the government, and that presented by me, has been formally closed, and it is now for the Board to determine whether the evidence submitted does not prove that I am mentally, morally, and professionally fitted to perform all the duties at sea of a commodore in the United States Navy.

I have passed my *physical examination*, and desire to state in this connection that my health was never in a better condition than now, and am as able to bear as much bodily labor and fatigue as at any period of my life. My *mental capacity* is unimpaired, and, I infer, is unquestioned by the Board, and for my *professional attainments* it is with pride that I refer to my record, submitted for your consideration, in the belief that but few in the service have a more satisfactory one. As stated therein, I entered the service on the 21st of June, 1839, more than *thirty-eight years ago*, and have been on *active duty during that time nearly twenty-nine years, comprising seventeen years and eight months of sea-service and eleven years and three months of other service.*

In support of my moral character I refer with pleasure to the evidence submitted, feeling satisfied that the testimony of my brother officers, as well as that of prominent citizens who have known me for years, will establish the fact that my moral status is now an exemplary one, and which, with God's aid, I will keep unimpaired for all time.

As stated, having full confidence in the intelligence as well as impartiality of the Board, I would be willing to submit the testimony presented without comment, believing that the knowledge of the Board, as to the rules of evidence, would induce it to throw out such portions of the replies as are irrelevant, or which are based upon mere rumor, and without personal knowledge of the facts; but inasmuch as the statements are of record, I deem it important that reference should be made to them for the purpose of showing that they are inadmissible, and should not therefore be considered.

The evidence now before you is to be duly weighed and considered from a legal standpoint; and hence all that is hearsay is incompetent and inadmissible, inasmuch as it rests not upon the personal knowledge of the witness, but on the veracity and competency of some other person, from whom the witness may have received his information. See Benét on Military Law, page 251; which authority further states "that such evidence is very liable to be fallacious, from the facility with which it may have been imperfectly heard, or from having been misunderstood, or inaccurately remembered, or perhaps perverted, or possibly altogether fabricated." I will now proceed to analyze the evidence referred to.

1st. Replies of Rear-Admiral John Rodgers to the interrogatories propounded by the Board:

He states that I served a short time in his command, knows *nothing personally* as to my habits, but *believes I am reputed to be an intemperate man*, and that he considers me professionally qualified for promotion, aside from *IMPUTED* intemperance.

2d. Replies of Admiral A. L. Case:

Has known me many years, and that I was in command of the Lancaster, and served with him at Key West in 1874; that he was obliged to relieve me from command on account of intemperance, and that for the reasons stated I was not fitted for promotion.

3d. Replies of Commodore G. H. Cooper:

Has known me since 1839; served with me in the Perry Japan squadron, and that I was considered an efficient officer, but is not sufficiently acquainted with me to express an opinion as to my habits or fitness for promotion.

4th. Replies of Commodore J. W. A. Nicholson:

Has known me about thirty years, and served as midshipman with me in the Mediterranean squadron. *Has during thirty years seen me intoxicated more than once.* Regards me mentally and professionally qualified for promotion; but for *alleged intemperance, not.*

5th. Replies of Commodore George M. Ransom :

Has known me about thirty years, and served with me in North Atlantic squadron several months, and again when I was in command of the Lancaster; and that I apparently performed my duties in an efficient manner; that *he has reason to believe, but not from personal knowledge, but only from common report, that I am given to habits of intemperance*; that I am mentally and professionally qualified for promotion; that my reputation as a gentleman and an officer is unexceptionable, *otherwise than reputed habits of intemperance*, and that I am morally and professionally fit to perform all the duties of a higher grade; and that *he knows nothing against my moral character*.

6th. Replies of Commodore A. C. Rhind :

Has known me over thirty years; were midshipmen together, and served under me at Key West, in 1874, when I was in command of the Lancaster; *knows that at times I have over-indulged in wine or spirits, but does not believe me to be habitually intemperate*, and considers me mentally and morally qualified for promotion; that my reputation as an officer and a gentleman is good, and regards me as qualified for promotion, with the exception of *OCCASIONAL over-indulgence in wine or spirits*, and in that matter as much qualified as some others who have passed the ordeal of examination.

7th. Replies of Commodore W. F. Spicer :

Has known me since 1844, and were classmates together, but have never met on other service; *has reason to believe that I have been given to habits of intemperance*; regards me as professionally qualified for promotion, and, so far as he knows, I am a competent officer and gentleman, and if in command of a squadron *would not hesitate to send me on an important service in command of a vessel if such employment rested solely on his idea of my intelligence and ability as an officer*.

The foregoing testimony completes in full the *only* record before you relating to my "mental, moral, and professional fitness for promotion," which in the slightest degree calls in question my *moral status*.

The witnesses who have any knowledge of me testify to my mental and professional qualifications as fitting me for promotion, and it is submitted whether the very unsatisfactory averments referring to habits of intemperance should have sufficient weight to prove that fact, and thus prevent me from securing the promotion to which I am in every way entitled. The gist of the testimony is as follows:

Admiral John Rodgers *KNOWS nothing personally as to my habits, BUT BELIEVES* I am reputed to be an intemperate man. He does not even say *he believes I am such nor that it is a general belief, BUT BELIEVES* (signifying even a doubt as to the fact) I am reputed to be such. His evidence being simply *hearsay* is not entitled to consideration, and should be thrown out.

Commodore G. H. Cooper knows nothing affecting my moral character, and his testimony should therefore be regarded in my favor.

Commodore J. W. A. Nicholson says that during a period of thirty years he has seen me intoxicated more than once, and *alleges intemperate habits*. His testimony is not sufficiently specific to entitle it to specific consideration. He does not state the number of times he has seen me under the influence of liquor, or whether it was during my boyhood or in later years, or whether while on or off duty; and which facts are necessary to be shown to arrive at a conclusion whether the occasions referred to establish evidence of present intemperate habits and unfitness for promotion. His testimony, therefore, being vague and indefinite, should not be entertained by the board.

Commodore Ransom swears that he has no personal knowledge of my having intemperate habits, and *knows nothing against my moral character* unfitting me for promotion. The testimony of this witness should be considered by the board as in my support, throwing out that portion relating to *common report*, which, however, has not influenced the mind of the affiant to my prejudice.

Commodore Rhind swears that *he does not believe me to be habitually intemperate*, but that I have occasionally over-indulged in wine or spirits. This testimony relates to the PAST, and fails to prove habits of intemperance, which alone would unfit me for the promotion I now seek.

Admiral A. L. Case states that he was obliged to relieve me from command, in 1874, on account of intemperance. This action was *not based upon personal knowledge*, but entirely upon the reports of others, and relates to the PAST, and has *no bearing upon my habits for nearly four years past, or upon my present moral character*, as I have not seen Admiral Case during that time, and, consequently, he is incompetent to determine the fact as to whether *I am now morally fitted for promotion*.

The foregoing résumé of the evidence shows that not a single witness, with the exception of Commodore J. W. A. Nicholson, whose testimony is not entitled to consideration for the reason heretofore stated, *has any personal knowledge of my moral character, which would unfit me for promotion*; and when the great latitude given the witnesses by the respective interrogatories is considered, taking in my entire naval career, comprising a period of thirty-eight years, and which interrogatories, agreeably to the instructions of the department, should have been strictly confined to my status *from the date of my examination as captain* (the instructions prescribing that no question to any wit-

ness should refer to a time PRIOR to my last promotion), the testimony in fact should be regarded as preponderating in my favor, and in which view it is believed the board will concur.

As the question of my promotion is to be determined alone upon the weight of evidence presented for the consideration of the board, it is necessary that I should refer to the testimony of those officers to whom interrogatories were sent at my instance, which proves beyond a doubt my moral, mental, and professional fitness for promotion.

1st. Admiral J. H. Strong:

He has known me since 1842; that I was in command of his flagship, and discharged my duties satisfactorily, and *knows nothing of his own knowledge to disqualify me from promotion, and states that I have the reputation of being dissipated, but has never seen me intoxicated, and, so far as he personally knows, I am mentally, MORALLY, and PROFESSIONALLY a fit officer to perform my duties at sea in a higher grade.*

2d. Commodore F. H. Parker:

Has known me since my boyhood; served with me in Florida Bay in 1874, I in command of the Lancaster, and he as chief of staff of the united fleets, and that I performed my duties as divisional officer remarkably well, and *has no reason to believe me given to habits of intemperance; and that I am mentally, morally, and professionally a fit officer to perform my duties at sea in a higher grade.*

3d. Commodore John Guest:

Has known me from boyhood, served with me, and *does not consider that I have habits which disqualify me for promotion, and that I am mentally, morally, and professionally qualified for promotion, and my reputation as an officer and a gentleman is excellent, and of high tone, and that he would, as commander of a squadron, have sufficient confidence in me to send me on an important separate service in command of a vessel of war.*

4th. Commodore T. H. Stevens:

Has known me since childhood, and that I served with him when he commanded an expedition up the Pamunky River, in May, 1862, to open a way for McClellan's advance to Richmond, and to protect a cavalry detachment near the White House; that my services were of great value, and most efficient, I commanding the Marblehead at that time, and very ably, and that he considers me on the score of general intelligence and ability *one of the first officers in the Navy, and that I am in every way qualified for promotion.* He further states that in the estimation of my brother officers I am recognized as a thorough, gallant, and accomplished officer, and an accomplished gentleman. He further states that he would feel, if the occasion was one of peril, that to send me on the important service of command of a vessel of war, *it could not be in better hands.*

5th. Chaplain F. B. Rose:

He states that in his personal association with me he *observed no habits that were not praiseworthy.*

6th. Rear-Admiral A. Murray:

Has known me thirty years, served with me in the Atlantic squadron, I in command of a gunboat, and that I performed my duties with efficiency and ability. He has seen me under the influence of liquor, and *does not regard me as unqualified for promotion, and that my reputation in the service is first rate, and that I am mentally, morally, and professionally fit to perform my duties at sea in a higher grade.*

7th. Dr. W. T. Hood:

In 1873 or 1874 he served with me on the Brazil station when I was in command of the flagship Lancaster. *Has never seen me intoxicated on board ship, and knows of no habits of mine which disqualify me for promotion.* He further states that, subsequent to sailing with me, he met me nearly every day for two years at Georgetown, where we resided, and *never knew me to be intoxicated, and regards my reputation as excellent, and that I am in every way qualified for promotion.*

In addition to this evidence of my brother officers in support of my moral character, I refer to the following testimony of prominent citizens of the District, and officers of the Army, some of whom have known me intimately for *many years past, and others during the last four years, and all of whom have had almost daily association with me during the latter period of time, and who have had every opportunity of knowing the nature of my habits, for the purpose of proving that during the last four years they have never seen me under the influence of wine or spirits, and that my conduct during that time has been in every way exemplary and beyond reproach.* I refer—

1st. To the testimony of Wm. W. Corcoran, who swears that he has known me for twenty-five years, and that his intimacy with me during that time has given him opportunities to judge of my character, and that for the last four or five years I have come under his personal observation, he having generally seen me *as often as four or five times a week at his house; that he has never seen me in the slightest degree under the influence of liquor, and that I have shown no evidence whatever of habits of intemperance.*

2d. The testimony of Ex-Governor Henry D. Cooke.

Has known me six or seven years, about the *last four of which time he has lived next*

door to me in Georgetown ; he has seen me daily and there has been a good deal of intercourse between his family and ourselves ; that from personal knowledge he does not believe that I have habits of intemperance ; on the contrary, all that he knows of me justifies his opinion that my habits are exemplary and unexceptionable in that particular. He further states that, from his personal knowledge, he considers that I have not habits that unfit me for promotion, or for the position of a commodore in the Navy.

3d. The testimony of L. H. Pelouze, assistant adjutant-general, and brevet brigadier-general United States Army :

Has known me since the fall 1876, and has met me frequently in Georgetown and in Washington, and from his personal knowledge of me I have not habits of intemperance which would unfit me for promotion.

4th. General George C. Thomas :

Has known me for thirty years and has had every opportunity of judging my character during the whole time, and especially the last four years as neighbors and frequent visitors in Georgetown, and from personal knowledge knows that I have not habits of intemperance which would unfit me for promotion.

5th. The testimony of Wm. D. Whipple, colonel, A. D. C., brevet major-general United States Army :

Has known me about three years, and lives near me in Georgetown ; has frequently met me at his own house and at my own and frequently about town, and knows from his personal knowledge that I have not habits of intemperance which unfit me for promotion.

The foregoing evidence fully completes my case, and as the inference is that the only question involved affecting my promotion is *imputed intemperance*, I very cheerfully submit my case upon the evidence bearing thereon, believing that it strongly preponderates in my favor, and fully proves that my moral habits justify the promotion which I now seek. I desire to state, in conclusion, that from my first entry into the service in 1839 I have ever striven to perform my duties as an officer of the Navy, with due regard to maintaining its honorable reputation, and now, after an experience of more than thirty-eight years of creditable service, I feel that whatever errors that have been committed in the past will be avoided in the future, by an earnest and zealous effort on my part looking singly to the advancement of the interests of the service, and thereby sustain my reputation as an officer, who is "mentally, morally, and professionally" capable of performing all of his duties at sea in any sphere to which he may in the future be assigned.

Respectfully submitted.

S. NICHOLSON,
Captain United States Navy.

The NAVAL EXAMINING BOARD,
Washington, November 13, 1877.

T.

NAVAL EXAMINING BOARD,
Washington, November 13, 1877.

SIR: I have to request that the department will furnish the Examining Board with copies of all official papers on file touching the professional and moral character of Captain S. Nicholson, since 10th of June, 1870.

Very respectfully,

S. C. ROWAN,
Vice-Admiral and President.

Hon. R. W. THOMPSON,
Secretary of the Navy, Navy Department.

A true copy.

JAMES C. DULIN, Recorder.

U.

NAVY DEPARTMENT,
Washington, October 15, 1877.

SIR: Your letter of this date, requesting, for the use of the Examining Board, copies of all official papers on file touching the professional and moral character of Capt. S. Nich-

olson, since 10th of June, 1870, is received, and in reply you are informed that the clerical force of this office is insufficient to furnish copies of all such papers as may be required when officers are ordered for examination. The original records of the department are always accessible to the board, and can be transmitted when called for.

In the case of Capt. S. Nicholson, I transmit herewith a statement of his service, a record of a court of inquiry of September 30, 1870, and the record of his trial by court-martial, March 13, 1874.

These records you will please return to this office when the case is finished.

Very respectfully,

R. W. THOMPSON,
Secretary of the Navy.

S. C. ROWAN, U. S. N.,

President Naval Examining Board, Navy Department.

V.

NAVAL EXAMINING BOARD,
Washington, November 14, 1877.

SIR: The board, under section 1499 of the Revised Statutes, have this day received certain documentary matter from the files of the Navy Department in your case, which will be considered in connection with your examination for promotion; and you are hereby notified to appear before said board without delay.

By direction of the president of the board.

Respectfully,

JAMES C. DULIN, *Recorder.*

Capt. S. NICHOLSON, U. S. N., *Georgetown, D. C.*

A true copy.

JAMES C. DULIN, *Recorder.*

W.

NAVY DEPARTMENT, *November 15, 1877.*

SIR: Having been informed by the recorder that since I made (as I supposed) my final statement on Tuesday last, certain documentary matter has been received by the board which may, or may not, weigh strongly in my case, I am compelled to ask that ample time may be given me to thoroughly examine all documentary matter that has been thus received; and to this end I most respectfully request that I may have full and free access to the same. And also that I may be allowed until 1 p. m. on Monday next (19th instant) to prepare and present a statement in reply thereto.

Very respectfully,

S. NICHOLSON,
Captain, United States Navy.

Rear-Admiral S. C. ROWAN, U. S. N.,

President of Naval Examining Board.

X.

WASHINGTON, D. C., *November 20, 1877.*

GENTLEMEN: Agreeably to your summons of the 14th instant, I again appear before your board pursuant to the provisions of section 1496, Revised Statutes, for examination as to my "mental," "moral," and "professional" fitness for promotion.

I had reason to believe, after I had fully examined all the evidence then before your board relating to my case, that it had been formally closed; and, when I submitted my sworn statement in support of my case on the 13th instant, I supposed your conclusion as to my fitness for promotion would then be determined.

I now find, however, that since the conclusion, as I inferred, of my examination, the report of the proceedings of the court-martial in my case, held at Key West, Fla., during the month of March, 1874, nearly four years ago, and after the remission of the sentence imposed and my restoration to rank, had been called for by your board, pursuant to section 1499, Revised Statutes, and that my presence now is required to present, if

need be, a statement for your consideration WHY the matters and things therein stated should not be used against me in my PRESENT application for promotion.

I desire to state, with all deference to the intelligence and impartiality of this board, I enter my protest against the consideration of the proceedings of that court, for the following reasons:

1st. That they are not pertinent to the present issue.

2d. That the remission of the entire sentence by the Secretary of the Navy, pursuant to authority of law, relieved me "EO INSTANTI" from any and all stain of the sentence pronounced by the court, and restored me to my present position.

3d. The declaration on the part of the department by the remission of the sentence was to the effect that by such restoration I had fully atoned for the alleged offense, and that my disability being thus removed, *I stood in the eye of the law as though no offense had been committed*, and was therefore qualified and placed in a position to discharge my duties as a captain in the Navy, as well as those pertaining to a higher grade, if occasion so required, if no act of mine in the interim disqualified me for such service. Hence, the only question now pending before this board, agreeably to the provisions of the statute, is to determine whether the evidence, independent of the record of this court, *which relates alone to the past*, and is not pertinent to the *present determination of the case*, is sufficient to establish the fact that I am now mentally, morally, and professionally fitted to perform my duties at sea in a higher grade.

The weight of evidence submitted is strongly in my support, and which should be, in my judgment, conclusive to any jury before whom my case was tried. The law does not require an investigation as to *past transactions*, which should not have the slightest weight in influencing the action of the board, *but relates exclusively to the present condition of an officer*, and not to acts occurring four, five, or ten years ago, and which will, if not observed, work great injustice in bringing up for scrutiny every irregularity pertaining to the career of an officer, and which were committed through ignorance or without design, and are now regarded as indiscretions, and which have been more than atoned by his subsequent exemplary life. *My moral status since the date of the court-martial, nearly four years ago, stands unimpeached to the present time*, as fully established by the evidence; and while I very properly take exception to the proceedings of the court (see my resumé of the evidence, as also my letter to the Hon. Secretary of the Navy of the 12th of October last), and which proceedings, if carefully and impartially examined, would prove the fact that neither the charges nor specifications are sustained, yet my alleged offense *has been punished*, and the effect of your considering anew the findings of that court in relation to transactions alleged to have occurred *nearly four years ago*, and make them applicable to my present status, *would be, in fact, to punish me again for the same offense*, which would be in direct conflict with law and justice.

The proceedings of this court, therefore, are not pertinent to the issue, for the reasons above stated, and should not be considered by your board. The effect of the remission of my sentence by the Secretary of the Navy, as ruled in substance by Judge-Advocate Holt, U. S. A., one of the most able lawyers of the country, and whose decisions are recognized as rules of action for the government of the Army, and so far as the principles of the law are involved, equally applicable to the Navy, *is to remove from me the stain of the sentence of the court, and to restore me to my previous status, and thus qualify me to fully discharge the duties of a captain in the Navy*. He further decides that the remission of a sentence by a court-martial is a measure of reparation equivalent, practically, to an honorable discharge. (See Digest of Opinions of Judge-Advocate General, "Removal of Disability," page 326.)

In view of these legal rulings, *I am at this date* laboring under no disability resulting from the action of the court-martial in my case, and as the weight of evidence filed in the case legally proves the fact that *at this time, the date of my examination*, I am "mentally," morally, and professionally qualified for promotion, *as there has been no act committed by me since the date of my promotion to the position of captain proving that I am morally or otherwise disqualified*, I therefore submit my case in the confident belief that full justice will be done me by this board.

Respectfully submitted.

S. NICHOLSON,
Captain, United States Navy.

Vice-Admiral S. C. ROWAN, U. S. N.,
President of Naval Examining Board.

RECORD OF PROCEEDINGS OF THE NAVAL EXAMINING BOARD, CONVENED AT THE
NAVY DEPARTMENT, WASHINGTON, D. C., IN CASE OF CAPT. SOMERVILLE NICHOLSON,
U. S. N., FEBRUARY 23, 25, 27, 28, MARCH 1, 2, 4, 5, 1878.

NAVAL SOLICITOR'S OFFICE, March 12, 1878.

This record is correct in form and substance, and the evidence sustains the finding.

JOHN A. BOLLES,
Naval Solicitor.

EXECUTIVE MANSION, May 8, 1878.

The finding in this case is approved. Captain Nicholson will be retired in pursuance to section 1447 of the Revised Statutes.

R. B. HAYES.

NAVAL EXAMINING BOARD, NAVY DEPARTMENT,
Washington, February 23, 1878.

The board was convened this day at 11 o'clock a. m., in obedience to the order of the Secretary of the Navy. A copy of said order is hereto appended and marked A.

Present, Rear-Admiral John L. Worden, president; Rear-Admiral J. R. M. Mullany, Commodore J. M. B. Clitz, Commodore Pierce Crosby, Commodore A. K. Hughes, members, and James C. Dulin, recorder.

Capt. Somerville Nicholson, U. S. N., appeared as a candidate for promotion, in obedience to an order, a copy of which is appended hereto and marked B, and the board then proceeded to take up the examination in the case.

The order of the Secretary of the Navy convening the board was then read aloud by the recorder.

The president of the board then swore the recorder to the faithful performance of his duty as recorder.

The recorder then swore the members of the board faithfully and impartially to examine and report upon the candidate about to be examined.

The board then proceeded with the professional examination in the case.

Captain Nicholson was examined in fleet tactics and international law.

The board then proceeded to consider Captain Nicholson's moral fitness for promotion.

The record of the proceedings of a Naval Examining Board, convened at the Navy Department, in the case of Captain Nicholson.

The findings of said board, the records, answers, and evidence thereto annexed, furnished the board from the files of the department, were read aloud by the recorder in the presence and hearing of the candidate.

The record of the proceedings of said board in the case of Captain Nicholson are annexed hereto and marked Exhibit N. Ex. B.

The president of the board then asked Captain Nicholson if he desired to introduce any new testimony in his case.

Captain Nicholson stated, in answer to the question asked him by the president of the board, that he did not desire to introduce any new testimony, but would submit his case to the decision of the board upon the evidence before it. In case the board should introduce any new testimony he would ask to be permitted to rebut such testimony.

The candidate then submitted a paper writing to the president of the board, requesting until Monday next to present a brief statement to the board, which paper writing was read aloud by the recorder, and is appended hereto and marked C.

The board then granted Captain Nicholson's request. (See page 15. J. C. D.)

The record of the proceedings of a naval general court-martial convened on board the United States steamship Congress, Key West, Fla., in the case of Capt. Somerville Nicholson, and furnished the board from the files of the department, was received in evidence.

The recorder was then directed to read aloud the record of said court-martial, and pending the reading of the same the board adjourned to meet at 10.30 a. m. on Monday next, the 25th instant.

NAVAL EXAMINING BOARD, NAVY DEPARTMENT,
Washington, February 25, 1878.

The board met pursuant to adjournment. Present, all the members and the recorder.

The record of the proceedings of Saturday last was read and approved.

The board then resumed consideration of the case of Captain Nicholson.

The board by a vote designated the following officers to whom interrogatories should be forwarded in the case of Captain Nicholson as to his fitness for promotion, viz: Rear-Admirals Thomas O. Selfridge, William Radford, C. H. Poor, S. P. Lee, T. A. Jenkins, B. F. Sands, G. H. Scott, J. J. Almy, R. N. Stembel, Fabius Stanly, William Reynolds, C. R. P. Rodgers, Daniel Ammen; and Commodores R. H. Wyman, Andrew Bryson, D. McN. Fairfax, John C. Beaumont, John C. Febiger, and Robert W. Shufeldt, U. S. N.

The board then resumed the reading of the record of the naval general court-martial in the case of Captain Nicholson; and after said reading was concluded, it then adjourned to meet on Wednesday next, the 27th instant, at 10.30 a. m.

NAVAL EXAMINING BOARD, NAVY DEPARTMENT,
Washington, February 27, 1878.

The board met pursuant to adjournment. Present, all the members and the recorder. Capt. Somerville Nicholson was also present.

The record of the proceedings of yesterday was read and approved.

Captain Nicholson then asked and obtained the permission of the board to prepare and submit a written statement setting forth his reasons why his case should be determined upon the evidence submitted to the former board, which evidence had been read in his presence and hearing by the board at its meeting on the 23d instant; and also protesting against the action of the board in taking additional testimony in his case, and objecting to the further consideration of his case until the question of the competency of the board to reopen it for the purpose of obtaining additional testimony is determined.

The written statement of Captain Nicholson was read aloud by him and is appended to this record, and marked "D."

The board was then cleared to deliberate upon the statement, protest, and objection of the candidate.

The board considered the statement, protest, and objection of the candidate, and decided to overrule the objection.

The doors being opened, and the candidate being present, the recorder announced the decision of the board.

Captain Nicholson then asked permission to read the statement he had prepared in his own defense.

The president of the board informed Captain Nicholson that an opportunity would be allowed him to read his statement when all the testimony in the case will have been considered by the board.

The board then adjourned, to wait the answers of officers to the interrogatories of the board, until to-morrow, the 28th instant, at 10.30 a. m.

NAVAL EXAMINING BOARD, NAVY DEPARTMENT,
Washington, February 28, 1878.

The board met pursuant to adjournment. Present: All the members, the recorder, and Capt. S. Nicholson.

The record of proceedings of yesterday was read and approved.

The board having by vote, on the 25th instant, designated by name certain officers of the Navy to whom interrogatories should be forwarded in the case of Captain Nicholson, and the following named having duly answered said interrogatories and returned the same with their answers to the board, they were read, viz: Rear-Admirals T. O. Selfridge, William Radford, S. P. Lee, T. A. Jenkins, J. J. Almy, B. F. Sands, R. N. Stembel, Fabius Stanly, William Reynolds, Daniel Ammen; and Commodores R. H. Wyman, Andrew Bryson, J. C. Febiger, J. C. Beaumont, and Robert Shufeldt, U. S. N.

Captain Nicholson stated that he would enter his protest against the admission of all the hearsay testimony contained in the answers of officers to the interrogatories of the board in his case; and asked that all such testimony be expunged from the record.

The board decided to admit the answers of officers to the interrogatories of the board, have the same appended to the record, and Captain Nicholson was granted time in which to enter his written protest.

The aforesaid interrogatories and answers are annexed hereto, and marked, respectively, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, and S.

Rear-Admiral G. H. Scott returns to the board interrogatories addressed to him, with the following indorsement thereon: "I am unable to answer the within interrogatories, as I have no recollection that Captain Nicholson has ever sailed or served on any station or duty with me." Said interrogatories are appended hereto, and marked T.

A communication from Rear-Admiral C. R. P. Rodgers, U. S. N., acknowledging receipt of interrogatories, and stating that he could give none other than hearsay testimony, and asking whether he is a competent witness under such circumstances.

The president of the board addressed Admiral Rodgers a letter in answer to his communication, and requesting him to make answer to the interrogatories of the board according to the best of his knowledge and belief. Copies of said letters are appended hereto, and marked U and V.

The board then adjourned to meet to-morrow, the 1st of March, 1878, at 10.30 a. m.

NAVAL EXAMINING BOARD, NAVY DEPARTMENT,
Washington, March 1, 1878.

The board met pursuant to adjournment. Present, all the members, and the recorder. Capt. Somerville Nicholson, U. S. N., was also present.

The record of the proceedings of yesterday was read and approved.

Rear-Admirals C. H. Poor and C. R. P. Rodgers, and Commodore D. McN. Fairfax, U. S. N., having duly answered the interrogatories addressed to them, and returned the same with their answers to the board, they were read aloud by the recorder, and are annexed hereto, and marked respectively W, X, and Y.

Captain Nicholson then stated to the board that he had prepared a paper writing protesting against the admission of all hearsay testimony, and specifically the hearsay testimony contained in the answers of officers to the interrogatories of the board.

The president of the board informed Captain Nicholson that he could proceed to read the paper writing he had prepared.

Captain Nicholson then read aloud his protest, and after concluding its reading requested permission to submit an additional paper writing protesting against the admission of the hearsay testimony contained in answers of Rear-Admirals C. H. Poor and C. R. P. Rodgers and Commodore D. McN. Fairfax, which answers had been read this day to the board in his presence and hearing.

The board granted Captain Nicholson's request, and that officer, having prepared his protest in writing, read aloud the same to the board.

The paper writings containing the protest of Captain Nicholson are appended hereto, and marked S. N., Nos. 1 and 2.

The board was then cleared to consider the matter.

The door being opened, and Captain Nicholson being present, the recorder announced the decision of the board, that the answers of officers to the interrogatories of the board would be received, and appended to the record of its proceedings.

Captain Nicholson then asked that the record of proceedings of Saturday last, the 23d ultimo, may be so amended as to show that at the time the board decided to receive the record of the court-martial in his case as evidence, he was not present; and in this connection stated that he was not informed of the fact until Wednesday, the 27th ultimo, and that said record had never been read in his presence.

The board was cleared and the request and statement of Captain Nicholson considered.

The doors being opened, and Captain Nicholson being present, the recorder announced the decision of the board, as follows:

The board decided to amend its record of proceedings of Saturday last, after the words, "The board granted Captain Nicholson's request," and beginning for the same on the tenth line, page 4, as follows: *The board then proceeded to read the record of the court-martial in the case of Captain Nicholson; and the president of the board then asked the candidate if he desired to hear said record read, and that officer replied that he was familiar with the record and did not desire to hear it read, and he thereupon withdrew.*

Captain Nicholson then submitted a further protest in writing against the correction of the record as made by the board. Said protest is appended hereto, and marked S. N., No. 4.

The board was again cleared to consider the protest of Captain Nicholson.

The doors being opened, and Captain Nicholson being present, the recorder announced the decision of the board, that the board, after consideration of the protest, dissent from the view expressed by the candidate, and decided not further to amend its record of proceedings of the 23d ultimo, and that said record as amended is approved by the board.

Captain Nicholson then submitted a request in writing that the board adjourn until to-morrow at 10.30 a. m., to allow him to have such witnesses present that he may desire to interrogate.

The request of Captain Nicholson is appended to this record, and marked S. N., No. 5.

The board considered the request, and thereupon adjourned to meet to-morrow, the 2d March, at 10.30 a. m.

NAVAL EXAMINING BOARD, NAVY DEPARTMENT,
Washington, March 2, 1878.

The board met pursuant to adjournment. Present, all the members, and the recorder. Captain Somerville Nicholson, U. S. N., was also present.

The record of the proceedings of yesterday was read and approved.

Captain Nicholson requested that interrogatories be forwarded to Rear-Admiral L. M. Powell, U. S. N., for answers as to his fitness for promotion.

The board addressed interrogatories to Rear-Admiral L. M. Powell, agreeably to the request of Captain Nicholson.

Hon. DANIEL W. VOORHEES was then called as a witness by Captain Nicholson; and that gentleman, being present, was duly sworn by the president of the board, and testified as follows:

Question. Please state your name, residence, and present occupation.—Answer. Daniel W. Voorhees, of Indiana; a lawyer by profession, and at present United States Senator.

Q. How long have you known Captain Nicholson?—A. I think I met Captain Nicholson first about ten or twelve years ago.

Q. In your association with Captain Nicholson do you or do you not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?—A. I know of no such habits on the part of Captain Nicholson as, in my opinion, would render him unfit for promotion. In my association with him I have never seen any indication of a tendency to intemperance; on the contrary, during the last two or three years, it has so happened that I have been thrown socially a great deal with Captain Nicholson, and have observed an abstinence on his part under the most tempting circumstances that surprised me. Both last New Year's Day and the New Year's Day before that I was one of a party of several gentlemen, of which Captain Nicholson was also one, who made social calls together in this city. Our calls were very general, and were met with the traditional hospitality of Washington City; and while all the rest of us indulged in wine and similar refreshments, it was very observable that Captain Nicholson did not.

Q. Would you, as a large owner in an important steamship company, have sufficient confidence in the moral and professional character of Captain Nicholson to intrust him with the command of one of its ships when freighted with a valuable cargo?—A. From what I know of Captain Nicholson personally, and from the high reputation as a capable officer that I understand he enjoys, I would not hesitate to trust him with a vessel that contained my wife and children. So far as my own knowledge extends of Captain Nicholson, all that I know of him is very favorable.

There being no further questions to ask, the testimony of the witness as recorded was then read over to him, and by him pronounced correct.

JOHN J. KEY was next called as a witness by Captain Nicholson, and that gentleman, being present, was duly sworn by the president of the board, and testified as follows:

Q. (By Captain Nicholson.) Please state your name, residence, and present occupation.—A. John J. Key; residence, Georgetown, D. C.; and a lawyer by profession.

Q. How long have you known Captain Nicholson?—A. I have been intimately associated with Captain Nicholson since the year 1873. I know of Captain Nicholson by reputation, and frequently have heard of him—as early as the year 1862. Some knowledge of Captain Nicholson's character was given to me by my brother, Colonel Key, who was a member of General McClellan's staff at that time, who met Captain Nicholson during the time that McClellan was on York River and during the Peninsular campaign. This information was exceedingly favorable to Captain Nicholson, both as to that officer professionally and morally.

Q. In your association with Captain Nicholson, do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?—A. I, as stated, became intimately acquainted with Captain Nicholson in 1873. The social relations existing between the two families has thrown Captain Nicholson and myself together in our intercourse with one another almost weekly, and at any rate frequently, except when I would be absent for a longer period from my home. During the period of time I have spoken of, at our homes and in general society, I have frequently had an opportunity of ascertaining and knowing the habits of Captain Nicholson as to temperance or intemperance. During that period of time, if he had been a man of intemperate habits, in my opinion the same must have become known to me. From my knowledge I state that I believe Captain Nicholson's habits since the year 1873 have been good. In connection with this, on the New Year's days 1876 and 1877, Captain Nicholson and myself together made the usual calls on our friends, and on each of those occasions, while Captain Nicholson did not entirely abstain from the use of wine, he did not use it to excess, or as much as was ordinarily the habit of gentlemen making those social visits. We commenced our visits together and they were closed together, when we returned to our homes in the evening. Unqualifiedly I say that Captain Nicholson's habits since I have known him do not disqualify him, in any degree, from promotion in his profession.

Q. Would you, as a large owner of an important steamship company, have sufficient confidence in the moral and professional character of Captain Nicholson to intrust him with the command of one of its ships when freighted with a valuable cargo?—A. From my knowledge of Captain Nicholson, and from his reputation, both public and from other sources, I would have every confidence in intrusting him with any vessel, however valuable her cargo might be.

Q. (By the board.) You have given in your answers the impressions you received of Captain Nicholson from your brother; have you ever heard from other sources anything in reference to Captain Nicholson's being given to habits of intemperance?

(Captain Nicholson objected to the question being put to the witness.)

The board was cleared to consider the objection of Captain Nicholson.

The doors being opened, and the candidate and the witness being present, the recorder announced that the board had decided to overrule the objection.

The question of the board to the witness, as recorded, was then read aloud by the recorder.

A. Yes; I have. Without being able now to remember either gentlemen, officers of the Navy or citizens, I have frequently heard the habits of Captain Nicholson spoken of, and I have heard expressions of opinion widely differing, both from gentlemen connected with the Navy and others. In those expressions and views generally, and I may say always as far as I recollect, was connected with Captain Nicholson previous to my acquaintance with him. Since that time I have heard but one expression, that, whatever might have been the habits of Captain Nicholson during a certain period of his life, they were now of a character such as his restoration would conduce to the interests of the country, and that he was entirely, both from a knowledge of his profession and present condition, a fit person to whom to intrust the interests of his country.

There being no further question to ask the witness, his testimony, as recorded, was then read over to him, and by him pronounced correct; whereupon the witness withdrew.

Rear-Admiral L. M. POWELL, U. S. N., having made answers to the interrogatories addressed to him by the board, and returned said interrogatories with his answers to the board, they were read in evidence, and are appended hereto, and marked "S. N., No. 6."

Captain Nicholson then requested until 1 o'clock p. m., on Monday next, to prepare a written statement of his case.

The board granted the request of Captain Nicholson; and thereupon adjourned to meet at 1 o'clock p. m. on Monday next, the 4th instant.

NAVAL EXAMINING BOARD, NAVY DEPARTMENT,

Washington, March 4, 1878.

The board met pursuant to adjournment. Present, all the members and the recorder. Capt. Somerville Nicholson, U. S. N., was also present.

The record of the proceedings of Saturday was read and approved.

Captain Nicholson then submitted the following statement to the board:

NAVY DEPARTMENT, *March 4, 1878.*

MR. PRESIDENT AND GENTLEMEN OF THE BOARD: Owing to Sunday having intervened since the last adjournment of the board, I regret to state that I have been unable to prepare and have properly copied the final statement which I desire to present to the board; and I am compelled to request that I may be allowed until 12 o'clock to-morrow, the 5th instant, to present the statement referred to.

Respectfully submitted,

S. NICHOLSON,
Captain, U. S. N.

The board was cleared to consider the statement and request of Captain Nicholson; and after full consideration decided to grant this further request of Captain Nicholson.

The doors being opened, and Captain Nicholson being present, the decision of the board was announced in his hearing.

The board then adjourned to meet at 12 o'clock noon to-morrow, the 5th instant.

NAVAL EXAMINING BOARD, NAVY DEPARTMENT,

Washington, March 5, 1878.

The board met pursuant to adjournment. Present, all the members and the recorder. Capt. S. Nicholson, accompanied by his counsel, S. V. Niles, attorney-at-law, were also present.

The record of the proceedings of yesterday was read and approved.

The board then resumed consideration of the case of Captain Nicholson.

Captain Nicholson then, by his counsel, proceeded to read aloud the final statement of his case to the board.

At the conclusion of the reading of the final statement of Captain Nicholson, that officer read an additional statement protesting against the admission of the testimony of Rear-Admiral Thomas O. Selfridge.

Said statements are annexed to this record, and marked S. N. Nos. 7 and 8.

A letter from Rear-Admiral J. H. Strong, U. S. N., under date 10th March, 1875, and addressed to Capt. S. Nicholson, was read, and, at the request of Captain Nicholson, is appended hereto, and marked S. N. No. 9.

There being no further evidence to offer in the case, the president of the board relieved Captain Nicholson from further attendance upon the board.

The board being cleared, it then proceeded to deliberate upon the evidence in the case, hereto annexed and marked as aforesaid, and also upon the professional examination herein stated; and decided thereon that Captain Nicholson possesses in a high degree the mental and professional qualifications to perform efficiently all the duties of a naval officer at sea in the next higher grade.

The board further find that Capt. Somerville Nicholson, U. S. N., has failed to establish his moral fitness for promotion to the satisfaction of the board; and we do not therefore recommend him for promotion.

JOHN L. WORDEN,
Rear-Admiral and President.
J. R. M. MULLANY, *Rear-Admiral.*
J. M. B. CLITZ, *Commodore.*
PIERCE CROSBY, *Commodore.*
A. K. HUGHES, *Commodore.*

JAMES C. DULIN, *Recorder.*

A.

NAVY DEPARTMENT,
Washington, February 15, 1878.

SIR: A Naval Examining Board, for the examination of such officers as may be notified to appear before it as candidates for promotion, is hereby ordered to convene at this department on Wednesday, the 20th instant, at noon, or as soon thereafter as practicable. The board will consist of yourself, as senior member and president, and of Rear Admiral J. R. M. Mullany, and Commodores J. M. B. Clitz, Pierce Crosby, and A. K. Hughes as members. Mr. James C. Dulin will act as recorder.

The board will be organized anew in each case, as follows, viz: The senior member will swear the recorder to the faithful performance of his duty as recorder. The recorder will then swear the members of the board faithfully and impartially to examine and report upon the candidate about to be examined.

A copy of this order, and of all orders addressed by the department to any member of the board, or to the recorder, and also the original, or a copy, of every record or paper used in the case for any purpose, must be attached to the record of that case.

No fact which occurred prior to the last examination of the candidate must, for any purpose, be inquired into, or considered, in any case, and the record must show, as fully as may be practicable, everything which assisted the board in forming its opinion.

The board will by vote designate the officers to whom interrogatories shall, in any case, be forwarded for answers as to the mental, moral, or professional fitness for promotion of the candidate.

No such interrogatory, nor any question to any witness, shall, without the consent of the candidate, refer to a time prior to his last promotion, nor shall an inquiry as to matters of opinion be proposed to any officer who is his junior in rank.

Such witnesses as the candidate may reasonably request to have examined upon written interrogatories, or orally, under oath, administered by the senior member, shall be examined. Whenever such request is by the board deemed unreasonable, it shall be at once referred to the Secretary of the Navy for decision.

Each record must be signed by every member and by the recorder, and must show who of the members concurred in, and who, if any, dissented from, the opinion of the board.

Whenever the board fails to recommend a candidate for promotion, the record will state whether such failure is owing to his moral, mental, or professional unfitness for promotion.

Very respectfully, yours,

R. W. THOMPSON,
Secretary of the Navy.

Rear-Admiral JOHN L. WORDEN,
Washington, D. C.

A true copy.
JAMES C. DULIN, *Recorder.*

B.

NAVY DEPARTMENT,
Washington, February 16, 1878.

SIR: Report to Rear-Admiral J. L. Worden, on the 20th instant, for examination preliminary to promotion, required by section 1496 of the Revised Statutes, by a board of which he is president.

Respectfully,

R. W. THOMPSON,
*Secretary of the Navy.*Capt. S. NICHOLSON, U. S. N., *Georgetown, D. C.*

A true copy.

JAMES C. DULIN, *Recorder.*

C.

WASHINGTON, D. C., *February 23, 1878.*

SIR: Certain official documents having come to my knowledge since the action of the former board which I think have a bearing in my case, copies of which have been furnished me by permission of the Secretary of the Navy, I respectfully request until Monday next to present a brief statement to the board.

Respectfully,

S. NICHOLSON,
*Captain, United States Navy.*Rear-Admiral J. L. WORDEN,
President Examining Board.

D.

NAVY DEPARTMENT, *February 27, 1878.*

MR. PRESIDENT AND GENTLEMEN OF THE BOARD: When I was discharged from attendance on the board, on Saturday morning last, the 23d instant, I was led to believe that my case was to be determined upon the evidence submitted to the former board, the record of which had been read before you and in my presence, and that no additional evidence would be required, and that my case, so far as the evidence was concerned, was formally closed, and that the board would allow me until Monday morning, at 10.30 a. m., to present a sworn statement bearing upon my case. Agreeably to this ruling, I duly appeared and found the board in session, but was not called to appear before the board. I remained in attendance for more than three hours, when to my astonishment I was notified by the recorder that my case had been reopened, and that additional interrogatories would be sent to some eighteen witnesses, comprising eight officers on the active list and ten officers on the retired list of the Navy.

As a matter of duty to myself, I must enter my protest against this action, from the fact that, so far as the testimony was concerned, it was formally closed, and no additional evidence should be introduced without my consent; and further, that, by this action, I am deprived of the appearance of a most important witness in my case, that of the Hon. E. T. Beale, late minister to Austria, and a former officer of the Navy, who has known me from my boyhood, and who left the city on Monday last, the 25th instant, for California. I therefore object to the further consideration of my case until the question of the competency of the board to reopen the case for the purpose of obtaining additional testimony is determined, after the distinct and positive understanding that so far as the testimony was concerned it would rest upon the record of the proceedings of the first board.

In this connection, with your permission, I will proceed to read the statements I had proposed, agreeably to this understanding, to submit to the board on Monday morning, the 25th instant.

Respectfully submitted.

S. NICHOLSON,
Captain, United States Navy.

E.

Interrogatories addressed to Rear-Admiral T. O. Selfridge, U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, Chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Captain Nicholson?—A. Slightly for several years.

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; and did he perform his duty in an efficient manner?—A. Have never served with him; have only been associated as neighbors.

No. 3. In your association with Captain Nicholson, do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?—A. I have seen him partially inebriated once or twice. Once in a horse-car, in 1877. As to the other, I cannot recollect time or place.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson, do you or not consider him mentally qualified for promotion?—A. I am unable to answer.

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Nicholson professionally qualified for promotion?—A. I have had no opportunity of judging.

No. 6. What is the general reputation of Captain Nicholson in the Navy as an officer and gentleman?—A. That he is an intemperate officer.

No. 7. Would you, as commander of a squadron, have sufficient confidence in Captain Nicholson to send him on an important separate service in command of a vessel of war?—A. From my own observation, and general report, I would not.

No. 8. Do you or not consider Captain Nicholson to be mentally, morally, and professionally a fit officer to perform all his duties at sea in a higher grade?—A. Not morally qualified.

THOS. O. SELFRIDGE,

Rear-Admiral, United States Navy.

Witnesses:

THORNTON A. JENKINS, *Rear-Admiral, United States Navy.*

J. R. SELFRIDGE, *Lieutenant, United States Navy.*

F.

Interrogatories addressed to Rear-Admiral William Radford, U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, Chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Capt. S. Nicholson?—A. Ten years or more.

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; and did he perform his duty in an efficient manner?—A. He performed his duty satisfactorily. Served in the Washington navy-yard as a commander two or more years.

No. 3. In your association with Captain Nicholson, do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?—A. I know nothing personally of his habits of intemperance.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson, do you or not consider him mentally qualified for promotion?—A. I do consider him mentally qualified.

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Nicholson professionally qualified for promotion?—A. Yes.

No. 6. What is the general reputation of Captain Nicholson in the Navy as an officer and gentleman?—A. Good.

No. 7. Would you, as commander of a squadron, have sufficient confidence in Captain Nicholson to send him on an important separate service in command of a vessel of war?

No. 8. Do you or not consider Captain Nicholson to be mentally, morally, and professionally a fit officer to perform all his duties at sea in a higher grade?—A. Not hav-

ing any official or personal knowledge of his conduct during his last cruise at sea, I cannot intelligently answer queries Nos. 7 and 8.

WM. RADFORD,

Rear-Admiral, United States Navy

Witness:

J. H. UPSHUR,

Captain, United States Navy.

G.

Interrogatories addressed to Rear-Admiral S. P. Lee, U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Captain Nicholson?—A. Some time before the late civil war.

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; and did he perform his duty in an efficient manner?—A. He commanded first an iron-clad, then a blockader, in the North Atlantic blockading squadron, then under my command, for one year and four months in 1863 and 1864. He was efficient and gallant.

No. 3. In your association with Captain Nicholson, do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?—A. During the period referred to (in No. 2) he was once under the influence of liquor on duty. I have never seen him so before or since when on or off duty, in war or peace.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson, do you or not consider him mentally qualified for promotion?—A. Yes.

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Nicholson professionally qualified for promotion?—A. Yes.

No. 6. What is the general reputation of Captain Nicholson in the Navy as an officer and gentleman?—A. Good, so far as I personally know, except as to the partial qualification in my answer to No. 3.

No. 7. Would you, as commander of a squadron, have sufficient confidence in Captain Nicholson to send him on an important separate service in command of a vessel of war?—A. Yes; provided the main feature required in the important separate service was gallant conduct.

No. 8. Do you or not consider Captain Nicholson to be mentally, morally, and professionally a fit officer to perform all his duties at sea in a higher grade?—A. Yes; so far as I know from his service under my command.

S. P. LEE, *Rear-Admiral.*

Witnesses:

WILLIAM N. JEFFERS, *Commodore.*

EDWARD P. LULL, *Commander, United States Navy.*

H.

Interrogatories addressed to Rear-Admiral Thornton A. Jenkins, U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Captain Nicholson?—A. I do not know. I remember to have been acquainted with him many years.

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; and did he perform his duty in an efficient manner?—A. I have never been associated with him on duty, and have never had social relations with him further than pleasant recognitions at meeting him.

No. 3. In your association with Captain Nicholson do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him

given to habits of intemperance?—A. Having had no official, personal, or social relations with him, I do not know personally anything either favorable or unfavorable to him as an officer.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson do you not consider him mentally qualified for promotion?—A. As a gentleman met on the street and occasionally in society, I never discovered any deficiency of intellect.

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Nicholson professionally qualified for promotion?—A. Having had no association with him, I am not competent to give any opinion or answer.

No. 6. What is the general reputation of Captain Nicholson in the Navy as an officer and gentleman?—A. As a gentleman I have never heard anything against him. As an officer I have heard different opinions expressed.

No. 7. Would you, as commander of a squadron, have sufficient confidence in Captain Nicholson to send him on an important separate service in command of a vessel of war?—A. I cannot answer that question in regard to an officer about whom I personally literally know nothing.

No. 8. Do you or not consider Captain Nicholson to be mentally, morally, and professionally a fit officer to perform all his duties at sea in a higher grade?—A. My previous answers would seem to show my utter incompetency to properly answer this.

THORNTON A. JENKINS,

Rear-Admiral, United States Navy.

Witnesses:

A. H. MCCORMICK, *Commander, United States Navy.*

F. V. MCNAIR, *Commander, United States Navy.*

I.

Interrogatories addressed to Rear-Admiral J. J. Almy, U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Captain Nicholson?—A. Don't recollect when I first met him. Have known him for many years.

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; and did he perform his duty in an efficient manner?—A. Saw him two or three times when in command of the *Marblehead*, on the South Atlantic station, under Admiral Dupont, in 1863; also saw him a few times when in command of the *State of Georgia*, on the North Atlantic station, under Admiral Lee, in 1864. Upon these occasions didn't see enough of him to form a judgment whether he performed his duty in an efficient manner or not.

No. 3. In your association with Captain Nicholson, do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?—A. In my limited official association with Captain Nicholson I didn't observe anything in his habits which would disqualify him from promotion, or give me reason to believe him given to habits of intemperance.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson, do you or not consider him mentally qualified for promotion?—A. As before remarked, my association with Captain Nicholson when in command was of too short a duration to enable me to judge of his general intelligence and mental capacity for command.

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Nicholson professionally qualified for promotion?—A. I have to give the same answer to this question as I did to No. 4.

No. 6. What is the general reputation of Captain Nicholson in the Navy as an officer and gentleman?—A. From limited intercourse with him when in command, but seeing him often in social life for several years, his general reputation as an officer and gentleman was good, so far as I was enabled to judge.

No. 7. Would you, as commander of a squadron, have sufficient confidence in Captain Nicholson to send him on an important separate service in command of a vessel of war?—A. Don't know enough of his professional character and abilities to give an opinion.

No. 8. Do you or not consider Captain Nicholson to be mentally, morally, and professionally, a fit officer to perform all his duties at sea in a higher grade?—A. Unable to form an opinion, as I don't know enough about him.

Respectfully submitted.

JOHN J. ALMY,

Rear-Admiral, United States Navy.

Witnesses:

W. W. QUEEN, *Captain, United States Navy.*

M. FLETCHER, *Chief Engineer, United States Navy.*

J.

Interrogatories addressed to Rear-Admiral B. F. Sands, U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Captain Nicholson?—A. Since he was lieutenant.

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; and did he perform his duty in an efficient manner?—A. Captain Nicholson served in division under my command off Wilmington (he in command of steamer Georgia), for a short time in 1864, in which time we met but once. As well as I can remember, his duty was performed efficiently.

No. 3. In your association with Captain Nicholson, do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?—A. I know nothing, personally, of his habits.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson, do you or not consider him mentally qualified for promotion?—A. From my opportunities of judging, I do.

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Nicholson professionally qualified for promotion?—A. I do.

No. 6. What is the general reputation of Captain Nicholson in the Navy as an officer and a gentleman?—A. I cannot testify as to his general reputation.

No. 7. Would you, as commander of a squadron, have sufficient confidence in Captain Nicholson to send him on an important separate service in command of a vessel of war?—A. From what personal knowledge I have, I would.

No. 8. Do you or not consider Captain Nicholson to be mentally, morally, and professionally a fit officer to perform all his duties at sea in a higher grade?—A. From what personal knowledge I have, I would.

B. F. SANDS, *Rear-Admiral.*

Subscribed and sworn to before me this 26th day of February, A. D. 1878.

[SEAL.]

T. B. SANDS,

United States Commissioner.

K.

Interrogatories addressed to Rear-Admiral Roger N. Stembel, U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Captain Nicholson?—A. Since 1839.

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; and did he perform his duty in an efficient manner?—A. From 1839 to 1842. On board the United States Brandywine, on the Mediterranean station, as midshipman; he performed his duties efficiently.

No. 3. In your association with Captain Nicholson, do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?—A. Our associations of late years have been so limited, I do not know from my own observation that he has such habits, though I have reason to believe that he is given to habits of intemperance.

No. 4. From your opportunities of judging of the general intelligence and capacity

of Captain Nicholson, do you or not consider him mentally qualified for promotion?—A. I do.

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Nicholson professionally qualified for promotion?—A. Not having served together since 1842, I do not consider myself competent to pronounce upon his professional attainments, though I have never heard them questioned.

No. 6. What is the general reputation of Captain Nicholson in the Navy as an officer and gentleman?—A. So far as my knowledge extends, he is considered as both, barring his intemperate habits.

No. 7. Would you, as commander of a squadron, have sufficient confidence in Captain Nicholson to send him on an important separate service in command of a vessel of war?—A. I would not.

No. 8. Do you or not consider Captain Nicholson to be mentally, morally, and professionally a fit officer to perform all his duties at sea in a higher grade?—A. Mentally I do; morally I do not, for the reason stated in interrogatory No. 3; professionally, see interrogatory No. 5.

Very respectfully,

R. N. STEMBEL,

Rear-Admiral, United States Navy.

Witnessed by—

W. W. QUEEN, *Captain, United States Navy.*

S. R. FRANKLIN, *Captain, United States Navy.*

L.

Interrogatories addressed to Rear-Admiral Fabius Stanley, U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XI, chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Captain Nicholson?—A. Fifteen or twenty years.

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; and did he perform his duty in an efficient manner?—A. Not that I recollect.

No. 3. In your association with Captain Nicholson, do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?—A. Not from my association with him. No reason except rumor.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson, do you or not consider him mentally qualified for promotion?—A. I consider him mentally qualified.

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Nicholson professionally qualified for promotion?—A. I do.

No. 6. What is the general reputation of Captain Nicholson in the Navy as an officer and gentleman?—A. Captain Nicholson, when interested, has a positive manner, which some construe as rudeness; others regard it as a fit quality for an officer.

No. 7. Would you, as commander of a squadron, have sufficient confidence in Captain Nicholson to send him on an important separate service in command of a vessel of war?—A. I would.

No. 8. Do you or not consider Captain Nicholson to be mentally, morally, and professionally a fit officer to perform all his duties at sea in a higher grade?—A. I do.

FABIUS STANLEY,

Rear-Admiral, United States Navy.

Witnesses:

R. W. SHUFFELDT, *Commodore, United States Navy.*

J. R. BARTLETT, *Commander, United States Navy.*

M.

Interrogatories addressed to William Reynolds, rear-admiral, U. S. N., in the case of Somerville Nicholson, captain, U. S. N., by a board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Captain Nicholson?—A. Since 1847.

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; and did he perform his duty in an efficient manner?—A. Yes, on steamer Alleghany, 1847, 1848, 1849; Norfolk, Brazil, and Mediterranean, as master; he did perform his duties in an efficient manner; also on small-arms board in 1869.

No. 3. In your association with Captain Nicholson, do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?—A. I do not know that he has habits which disqualify him for promotion. I have reason to believe that he has been occasionally intemperate.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson, do you or not consider him mentally qualified for promotion?—A. I do.

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Nicholson professionally qualified for promotion?—A. I do.

No. 6. What is the general reputation of Captain Nicholson in the Navy as an officer and gentleman?—A. Excellent.

No. 7. Would you, as commander of a squadron, have sufficient confidence in Captain Nicholson to send him on an important separate service in command of a vessel of war?—A. I would have every confidence in him for such a service, if he could or would refrain entirely from the use of intoxicating beverages.

No. 8. Do you or not consider Captain Nicholson to be mentally, morally, and professionally a fit officer to perform all his duties at sea in a higher grade?—A. I do, under the qualification expressed in answer to No. 7.

WM. REYNOLDS,
Retired Rear-Admiral, U. S. N.

Witnesses to signature:

J. C. HOWELL, *Rear-Admiral.*

GEO. B. BALCH, *Commodore.*

WASHINGTON, February 2, 1878.

N.

Interrogatories addressed to Rear-Admiral Daniel Ammen, U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Captain Nicholson?—A. Twenty years or more.

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; and did he perform his duty in an efficient manner?—A. We have never served on the same vessel or on any other duty.

No. 3. In your association with Captain Nicholson do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?—A. He visited the Patapsco in November, 1862, and went from Wilmington, Del., to Philadelphia, a passage of a few hours; he visited the Miantonomoh, in Washington, in the early part of 1866, and was unmistakably intoxicated on both occasions.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson, do you or not consider him mentally qualified for promotion?—A. I do consider him mentally qualified for promotion.

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Nicholson professionally qualified for promotion?—A. I think I know him sufficiently well to have the opinion that he is professionally qualified for promotion.

No. 6. What is the general reputation of Captain Nicholson in the Navy as an offi-

cer and gentleman?—A. His reputation as an officer and a gentleman is good, so far as it can be, coupled with the reputation of having intemperate habits.

No. 7. Would you, as commander of a squadron, have sufficient confidence in Captain Nicholson to send him on an important separate service in command of a vessel of war?—A. I would not.

No. 8. Do you or not consider Captain Nicholson to be mentally, morally, and professionally a fit officer to perform all his duties at sea in a higher grade?—A. I do not.

DANL. AMMEN,
Rear-Admiral.

Subscribed and sworn to before me this 27th day of February, 1878.

[L. S.]

JAMES C. DULIN,
Justice of the Peace.

O.

Interrogatories addressed to Commodore R. H. Wyman, U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Captain Nicholson?—A. As far as my recollection serves me, about thirty-six years.

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; and did he perform his duty in an efficient manner?—A. We have never served together or on the same station.

No. 3. In your association with Captain Nicholson, do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?—A. Personally I have no knowledge of any habits rendering him disqualified for promotion. Well-substantiated report accuses him of intemperance when in command.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson, do you or not consider him mentally qualified for promotion?—A. I do.

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Nicholson professionally qualified for promotion?—A. Have never served together.

No. 6. What is the general reputation of Captain Nicholson in the Navy as an officer and a gentleman?—A. Captain Nicholson's general reputation as an officer and a gentleman, with exception of answer as embraced in No. 3, is excellent.

No. 7. Would you, as commander of a squadron, have sufficient confidence in Captain Nicholson to send him on an important separate service in command of a vessel of war?—A. No.

No. 8. Do you or not consider Captain Nicholson to be mentally, morally, and professionally a fit officer to perform all his duties at sea in a higher grade?—A. Professionally and mentally, yes. In my opinion, an officer addicted to intemperance cannot be fit to command.

R. H. WYMAN,
Commodore, United States Navy.

Witnesses:

ALLEN V. REED,
Commander, United States Navy.

J. E. PILLSBURY,
Lieutenant, United States Navy.

P.

Interrogatories addressed to Commodore Andrew Bryson, U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Captain Nicholson?—A. Since 1874, I think.

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If

yea, please state when, where, and in what capacity; and did he perform his duty in an efficient manner?—A. Have never served together.

No. 3. In your association with Captain Nicholson, do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?—A. Have never been associated with him, but believe him to have been given to habits of intemperance.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson, do you or not consider him mentally qualified for promotion?—A. Have had no opportunity of judging.

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Nicholson professionally qualified for promotion?—A. Never having served together, do not know what his professional attainments are.

No. 6. What is the general reputation of Captain Nicholson in the Navy as an officer and a gentleman?—A. Have never heard his reputation discussed, save that he had been given to habits of intemperance.

No. 7. Would you, as commander of a squadron, have sufficient confidence in Captain Nicholson to send him on an important separate service in command of a vessel of war?—A. Cannot judge of his mental or professional ability. I would not, unless it could be proven to me that those habits of intemperance to which I believe him to have been addicted no longer exist.

No. 8. Do you or not consider Captain Nicholson to be mentally, morally, and professionally a fit officer to perform all his duties at sea in a higher grade?—A. Do you know, *mentally or professionally*. Do not consider him a fit officer to perform all his duties at sea in a higher grade, unless the habits alluded to have been changed.

A. BRYSON,

Commodore, United States Navy.

GEORGE E. BUCKLEY, *Notary Public.* [SEAL.]

Interrogatories addressed to Commodore J. C. Febiger, U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Capt. S. Nicholson?—A. For a number of years; exact time unknown.

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; and did he perform his duty in an efficient manner?—A. I do not remember of ever having served together.

No. 3. In your association with Captain Nicholson, do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?—A. Have no personal knowledge.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson, do you or not consider him mentally qualified for promotion?—A. I consider him mentally qualified.

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Nicholson professionally qualified for promotion?—A. Have not sufficient personal knowledge to answer.

No. 6. What is the general reputation of Captain Nicholson in the Navy as an officer and gentleman?—A. Not good.

No. 7. Would you, as commander of a squadron, have sufficient confidence in Captain Nicholson to send him on an important separate service in command of a vessel of war?—A. Not if other officers were available.

No. 8. Do you or not consider Captain Nicholson to be mentally, morally, and professionally a fit officer to perform all his duties at sea in a higher grade?—A. I do not.

JOHN C. FEBIGER, *Commodore.*

Witnesses:

I. C. P. DE KRAFFT, *Captain.*

D. G. McRITCHIE, *Lieutenant United States Navy.*

R.

Interrogatories addressed to Commodore J. C. Beaumont, U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Captain Nicholson?—A. To the best of my recollection, about eighteen years.

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; and did he perform his duty in an efficient manner?—A. Have not served with him since his last promotion.

No. 3. In your association with Captain Nicholson, do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?—A. From personal knowledge, I know of no habits which would unqualify him for promotion.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson, do you or not consider him mentally qualified for promotion?—A. I do.

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Nicholson professionally qualified for promotion?—A. I do.

No. 6. What is the general reputation of Captain Nicholson in the Navy as an officer and gentleman?—A. Excellent.

No. 7. Would you, as commander of a squadron, have sufficient confidence in Captain Nicholson to send him on an important separate service in command of a vessel of war?—A. The occasion of such important separate service must arise before I would determine my action in this matter. Ordinarily I would.

No. 8. Do you or not consider Captain Nicholson to be mentally, morally, and professionally a fit officer to perform all his duties at sea in a higher grade?—A. I do.

J. C. BEAUMONT,
Commodore, United States Navy.

Subscribed and sworn to before me this 27th day of February, 1878.

[L. S.]

JAMES C. DULIN, *Justice of the Peace.*

S.

Interrogatories addressed to Commodore Robert Shufeldt, U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Capt. S. Nicholson?—A. I have known him about thirty years.

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; and did he perform his duty in an efficient manner?—A. In 1869 and 1870 we were on joint service at Portland, Me., during the funeral ceremonies of Mr. Peabody. He commanded the Benicia and I commanded the Miantonomoh. On one occasion during that time, I visited the ship under his command and found him in a state of intoxication, and unfit for duty. I have never been associated with Captain Nicholson since, neither on shore or afloat, on duty.

No. 3. In your association with Captain Nicholson, do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?—A. I do not know of my personal knowledge that Captain Nicholson is given to intemperance as a habit, nor have I any personal reason for believing so.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson, do you or not consider him mentally qualified for promotion?—A. I consider him mentally qualified for promotion.

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Nicholson professionally qualified for promotion?—A. I consider him professionally qualified for promotion.

No. 6. What is the general reputation of Captain Nicholson in the Navy as an officer and gentleman?—A. Captain Nicholson has a high reputation, both as an officer and as a gentleman.

No. 7. Would you, as commander of a squadron, have sufficient confidence in Captain Nicholson to send him on an important separate service in command of a vessel of war?—A. I would not hesitate to send him on important separate service if after a thorough investigation I found that he was not given to habits of intemperance.

No. 8. Do you or not consider Captain Nicholson to be mentally, morally, and professionally a fit officer to perform all his duties at sea in a higher grade?—A. I consider him *mentally* and *professionally* fit to perform all his duties at sea in a higher grade. I am not qualified from personal knowledge to express an opinion as to his *moral* quali-

fications, if that word is intended to embrace in its meaning such habits of an officer as may disqualify him for promotion.

R. W. SHUFELDT,
Commodore, United States Navy.

Sworn and subscribed to before me this 28th day of February, A. D. 1878.

[L. S.]

JAMES C. DULIN, *Justice of the Peace.*

T.

Interrogatories addressed to Rear-Admiral G. H. Scott, U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Captain Nicholson?

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; and did he perform his duty in an efficient manner?

No. 3. In your association with Captain Nicholson, do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson, do you or not consider him mentally qualified for promotion?

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Nicholson professionally qualified for promotion?

No. 6. What is the general reputation of Captain Nicholson in the Navy, as an officer and gentleman?

No. 7. Would you, as commander of a squadron, have sufficient confidence in Captain Nicholson to send him on an important separate service in command of a vessel of war?

No. 8. Do you or not consider Captain Nicholson to be mentally, morally, and professionally a fit officer to perform all his duties at sea in a higher grade?

I am unable to answer the within interrogatories, as I have no recollection that Captain Nicholson has ever sailed or served on any station or duty with me.

G. H. SCOTT,
Rear-Admiral, United States Navy.

U.

UNITED STATES NAVAL ACADEMY,
Annapolis, Md., February 26, 1878.

SIR: I have this morning had the honor to receive interrogatories in the case of Capt. Somerville Nicholson, sent to me by you as president of the Examining Board.

As I have been in no way associated with Captain Nicholson upon duty for more than fifteen years, and as I could give none other than hearsay testimony as to any alleged irregularity on his part, I would respectfully ask whether I am a competent witness, under such circumstances.

I beg to await your reply before answering the very searching interrogatories.

Very respectfully, your obedient servant,

C. R. P. RODGERS,
Rear-Admiral, United States Navy.

Rear-Admiral JOHN L. WORDEN, U. S. N.,
President Examining Board, Navy Department.

V.

NAVAL EXAMINING BOARD, NAVY DEPARTMENT,
Washington, February 28, 1878.

SIR: Your communication of yesterday's date is received. In reply I have to request that you will be pleased to make answers to the interrogatories addressed to you by the board, to the best of your knowledge and belief.

I am, sir, very respectfully,

JOHN L. WORDEN,
Rear-Admiral and President of Board.

Rear-Admiral C. R. P. RODGERS, U. S. N.,
Superintendent Naval Academy.

W.

Interrogatories addressed to Rear-Admiral C. H. Poor, U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Capt. S. Nicholson?—A. For many years; can't say how many.

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; and did he perform his duty in an efficient manner?—A. Never served together on any station or duty.

No. 3. In your association with Captain Nicholson, do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?—A. Nothing ever came under my own observation to indicate habits rendering Captain Nicholson unfit for promotion; have heard him charged with intemperance.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson, do you or not consider him mentally qualified for promotion?—A. Not having been associated with Captain Nicholson on duty, cannot explicitly answer this question.

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Nicholson professionally qualified for promotion?—A. Same as answer to preceding question.

No. 6. What is the general reputation of Captain Nicholson in the Navy as an officer and a gentleman?—A. The reputation of Captain Nicholson in the Navy is unfavorable, on account of alleged habits of intemperance; as a gentleman, he stands high.

No. 7. Would you, as commander of a squadron, have sufficient confidence in Captain Nicholson to send him on an important separate service in command of a vessel of war?—A. As a commander of a squadron I could not, on account of Captain Nicholson's reputed habits of intemperance, conscientiously trust him with an important separate command of a vessel of war, unless fully convinced that the imputation was removed by long-continued abstinence.

No. 8. Do you or not consider Captain Nicholson to be mentally, morally, and professionally a fit officer to perform all his duties at sea in a higher grade?—A. I consider Captain Nicholson morally, in the general acceptance of the term, and professionally, according to his reputation (professionally), fit to perform all his duties at sea in a higher grade.

Very respectfully,

C. H. POOR,
Rear-Admiral, United States Navy.

Subscribed and sworn to before me this 28th day of February, 1878.

JAMES C. DULIN, *Recorder.*

X.

Interrogatories addressed to Rear-Admiral C. R. P. Rodgers, U. S. N., in the case Capt. Somerville Nicholson, U. S. N., by a board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Captain Nicholson?—A. Thirty years.

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; and did he perform his duty in an efficient manner?—A. We were messmates on the Coast Survey for a year or two, where he performed his duty in the most efficient and exemplary manner. We were, for a short time, in the South Atlantic squadron together during the war, but I saw very little of him.

No. 3. In your association with Captain Nicholson, do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?—A. When we were messmates his habits were exemplary. Since then I have reason to believe him given to habits of intemperance.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson, do you or not consider him mentally qualified for promotion?—A. In the highest degree.

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Nicholson professionally qualified for promotion?—A. He is one of the most skillful and competent officers in the Navy.

No. 6. What is the general reputation of Captain Nicholson in the Navy as an officer and gentleman?—A. Excellent, except as to sobriety.

No. 7. Would you, as commander of a squadron, have sufficient confidence in Captain Nicholson to send him on an important separate service in command of a vessel of war?—A. On account of his alleged habits, I should not.

No. 8. Do you or not consider Captain Nicholson to be mentally, morally, and professionally a fit officer to perform all his duties at sea in a higher grade?—A. On account of his alleged habits, I do not.

C. R. P. RODGERS,

Rear-Admiral, United States Navy.

Witnesses :

JAMES A. GREER, *Captain, United States Navy.*

S. D. GREENE, *Commander, United States Navy.*

Y.

Interrogatories addressed to Commodore D. McN. Fairfax, U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in accordance with Title XV, chapter 4, Revised Statutes of the United States.

No. 1. How long have you known Capt. S. Nicholson?—A. Since 1840.

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; and did he perform his duty in an efficient manner?—A. In 1870 or 1871 he fitted out a ship of war, *Benicia*, at Portsmouth, N. H., while I was captain and executive, and twice was prevented attending to his duties as captain in consequence of drinking to excess. Commodore John Winslow was commandant of station.* Earlier, as midshipman on board the *Brandywine*, in the Mediterranean in 1841, he performed his duties in an efficient manner.

No. 3. In your association with Captain Nicholson, do you or not know of his having habits which render him unqualified for promotion, or have you reason to believe him given to habits of intemperance?—A. From my association with Captain Nicholson, I know that his habits unfit him for promotion. I have reason to believe him given to habits of intemperance.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson, do you or not consider him mentally qualified for promotion?—A. I believe Captain Nicholson mentally qualified for promotion.

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Nicholson professionally qualified for promotion?—A. I consider Captain Nicholson professionally qualified for promotion.

No. 6. What is the general reputation of Captain Nicholson in the Navy as an officer and gentleman?—A. When not drinking hard, a gentleman. His reputation is that of a drunkard oftentimes on duty.

No. 7. Would you, as commander of a squadron, have sufficient confidence in Captain Nicholson to send him on an important separate service in command of a vessel of war?—A. No; I would not have sufficient confidence in Captain Nicholson to send him on important separate service in command of a vessel of war.

No. 8. Do you or not consider Captain Nicholson to be mentally, morally, and professionally a fit officer to perform all his duties at sea in a higher grade?—A. Mentally and professionally, yes; but morally unfit to perform his duties at sea in a higher grade.

D. McN. FAIRFAX.

Commodore, United States Navy.

Witnesses :

NATHAN P. TOWNE, *Passed Assistant Engineer, United States Navy.*

S. DENISON HURLBUT, *Passed Assistant Paymaster.*

* It will naturally be asked why I did not report Captain Nicholson when he was fitting out the *Benicia*. I did say to Commodore Winslow that Captain Nicholson was kept away from the yard by inability brought on by drinking, and suggested that he be required to attend every day at the yard to look after his ship, then nearly ready for sea; but he replied that he was "making a fool of himself, he knew, having seen him at our quarters drunk" on the occasion of a little party which I purposely did not attend.

S. N., No. 1.

WASHINGTON, D. C., March 1, 1878.

GENTLEMEN: When the respective replies of the several officers to the interrogatories sent out by this board were read, on the 28th ultimo, for its information, I entered my protest against the consideration of those answers referring to my moral character which were not founded upon personal knowledge, but which were based exclusively upon the *hearsay* declaration of persons who were not named by them, or upon mere idle *rumor*, on the ground that such testimony was inadmissible, being in conflict with the law governing the case.

In addition to the objection stated, I further protested against the consideration of any answer relating to facts and circumstances occurring *prior* to my last examination for promotion, to a captain, when I was promoted to my present position, as being in conflict with the instructions of the department, prescribed by the President of the United States, through the Secretary of the Navy, for the guidance of examining boards (*vide* section 1496 Revised Statutes), providing for the appointment of such boards by the President, and who, by virtue of his authority, prescribes the rules which shall govern them in their official action. The fact is recognized that the functions of the Examining Board are of a *judicial character*; it is to receive the sworn testimony of witnesses, and duly examine and weigh the same, throwing out that which is irrelevant or of a *hearsay character*, or mere general *opinions* affecting the character of the applicant for promotion, and only consider that proof which is direct, and derived from an actual *personal knowledge* of the matter and things sworn to.

As the principles of law governing courts-martial and courts of inquiry are equally applicable to examining boards, it is necessary that I should refer to the law applicable to *hearsay* testimony in support of my protests against the consideration of this class of testimony.

"Benét on Military Law and Courts-Martial," a recognized authority in our own country, in defining "hearsay evidence," uses the following language (p. 251):

"The term 'hearsay evidence' is used with reference both to that which is written and that which is spoken. But in its legal sense it is confined to that kind of evidence which does not derive its effect solely from the credit to be attached to the witness himself, but rests also, in part, on the veracity and competency of some other person from whom the witness may have received his information. The general rule is that hearsay evidence is *not receivable*.

"It is inadmissible on two grounds: First, that the party originally stating the facts does not make the statement under the sanctity of an oath; and, secondly, that the party against whom the evidence is offered would lose the opportunity of examining into the means of knowledge of the party making the statement. By our Articles of War, every fact against the prisoner must be proven on oath, and, by the Constitution, the accused must be confronted with the witnesses against him.

"Besides these tests, it must be considered that such evidence is very liable to be *fallacious* from the facility with which it may have been imperfectly heard, or from having been misunderstood or inaccurately remembered, or perhaps perverted, or possibly altogether fabricated. It is to be observed, also, that persons communicating such evidence are not subject to the danger of a prosecution for perjury; for where the hearsay statement is said to have been made when no third person was present, the witness has no cause to be apprehensive of punishment, even though he has entirely fabricated the statement."

As the conclusions reached by this authority are founded upon well-defined principles of law, recognized and adopted by all the military courts of our country, and which must be received and recognized by this board as a rule of action for its guidance, I will proceed to enter my objections *seriatim* to the respective answers above referred to, and insist that they should be thrown out by the board as inadmissible.

1st. I protest against the reception of the testimony of Admiral T. O. Selfridge, who swears that he has never served with me, and has only been associated with me as a neighbor, and states that he has seen me *partially inebriated once or twice*—once in a horse-car, in 1877, but is at fault as to the other, not recollecting time or place.

In this case his memory shows a remarkable degree of treachery, recollecting that I was partially inebriated on one occasion, which he recollects with distinctness as to place but not as to time, but is ignorant as to the other occasion, and concludes that my general reputation is that I am an intemperate officer, failing to state the reasons inducing this opinion, from what source, or whether it is reliable, and which is a very remarkable conclusion after admitting his failure to prove the *second time* that I was *partially inebriated*, although he was my neighbor for a year or more, and that *he had never served with me*.

2d. In the matter of the reception of the evidence of Commodore R. W. Shufeldt, while he fully indorses me, I protest against his evidence, for the reason that *the only time* he ever saw me under the influence of liquor was *antecedent* to the date of my last

examination, and therefore is not admissible under the rules as prescribed by the President for the government of examining boards.

3d. I protest against the reception of the testimony of Commodore J. C. Febiger, on the ground that while he has known me for a number of years, he has no *personal knowledge* that I am given to habits of intemperance, and yet he declares that my reputation as an officer is not good, without specifying the sources inducing the declaration.

4th. I enter my protest against the reception of the testimony of Commodore A. Bryson, on the ground that while he declares he has never served with me and has no *personal knowledge of my qualities*, and has only known me since 1874, *four years ago*, he believes that I have been given to habits of intemperance. As the belief is founded upon mere opinion, and the sources of his information are not stated, and relates to a period of time which is *believed to be antecedent* to my last examination, not seeing him since April, 1874, therefore under the prescribed rule his testimony is inadmissible.

5th. I protest against the reception of the testimony of Commodore R. N. Stembel, who, while he swears that he has known me *thirty-nine years* and *served with me three years* on the Brandywine, has no *personal knowledge* that I am given to habits of intemperance, and yet believes I am given to such habits. As this declaration is founded upon information acquired from *other sources*, although he served with me for three years and has known me for thirty-eight and yet has no *personal knowledge of such habits*, his testimony is therefore inadmissible.

6th. I also enter my formal protest against the consideration of the testimony of Rear-Admiral Daniel Ammen, on the ground that the two occasions when he alleges I was intoxicated occurred antecedent to my last promotion, the first occasion being in November, 1862, eight years and six months before my last promotion, and the second in the early part of 1866, four years prior to my last promotion; and therefore, under the rules prescribed for the guidance of examining boards, his testimony is inadmissible.

7th. I enter my protest against the consideration of the testimony of Commodore R. H. Wyman, on the ground that his declaration as to my alleged habits of intemperance are founded upon what he alleges to be well-substantiated *reports*, notwithstanding his statement that he has no personal knowledge of my habits, although knowing me for about thirty-six years, and has been a resident in the same city with me for a period of twenty years.

As the objections stated to the reception of the evidence referred to are in conformity with law and precedent, I respectfully submit the same for your consideration and favorable action.

Respectfully submitted.

S. NICHOLSON,
Captain, United States Navy.

To the President and Gentlemen of the Naval Examining Board,
United States Navy, Washington, D. C.

S. N., No. 2.

NAVY DEPARTMENT, March 1, 1878.

MR. PRESIDENT AND GENTLEMEN OF THE BOARD:

GENTLEMEN: In addition to my protest just read, I present the following:

I enter my protest against the answers of Commodore D. McN. Fairfax being received as evidence, on the ground that in his answer to interrogatory No. 2 the circumstances as related by him occurred prior to my last promotion.

I also protest against his answer to interrogatory No. 2, on the ground that he does not state the reason for his opinion, and also upon the fact that I have in no way been associated with Commodore Fairfax since my last promotion. His conclusions are therefore based upon hearsay testimony.

I also enter my solemn protest against the reception as testimony of the notes appended to his answers to interrogatories alleging to state the substance of a conversation with Commodore Winslow, long since dead, and said to have occurred in 1870 or 1871.

I enter my protest against the reception as evidence of that part of Rear-Admiral C. R. P. Rodgers's answer to interrogatory No. 3, wherein he states that he has reason to believe he (I) is given to habits of intemperance, after his formal statement in writing to the board that he "could give none other than hearsay testimony," and asking whether he is a "competent witness under such circumstances."

For the same reason, I object to the reception as evidence of his answers to interrogatories Nos. 7 and 8.

I also enter my protest against the reception as evidence of the answer of Rear-

Admiral Poor to the interrogatory No. 3, on the ground that it is vague and based entirely upon reports or rumors.

I enter my protest against his answer to interrogatory No. 7 upon the same grounds, and, further, that he does not state from whence or from whom he received his alleged information.

Respectfully submitted.

S. NICHOLSON,
Captain, United States Navy.

S. N., No. 3.

NAVAL EXAMINING BOARD, NAVY DEPARTMENT,
March 1, 1878.

GENTLEMEN OF THE BOARD: I respectfully request that the record of proceedings of Saturday last, the 23d ultimo, may be so amended as to show that at the time the board decided to receive the record of the court-martial in my case *as evidence* I was not present, nor was I informed of this fact until Wednesday, the 27th ultimo, and then not officially, and that the record of the proceedings of Saturday has never been read in my presence or hearing.

Respectfully submitted.

S. NICHOLSON,
Captain, United States Navy.

S. N., No. 4.

NAVAL EXAMINING BOARD, NAVY DEPARTMENT,
March 1, 1878.

MR. PRESIDENT AND GENTLEMEN OF THE BOARD: I respectfully protest against any amendment to record of proceedings of Saturday, as far as I am concerned, unless the amendment that I have requested be acceded to by the board, viz, that after the words "The board granted Captain Nicholson's request" the following be added: "and that officer thereupon withdrew, at his own volition and by permission of the president of the board, under the belief that the evidence was closed for that day at least, and that the record of the court-martial was only to be referred to in order to assist the board in forming their opinion."

Respectfully submitted.

S. NICHOLSON,
Captain, United States Navy.

S. N., No. 5.

MARCH 1, 1878—1 p. m.

GENTLEMEN: I respectfully request that the board may adjourn until to-morrow, at 10.30 a. m., to allow me to have such witnesses present that I may desire to interrogate, and to consider the testimony produced, and to decide what other witnesses I may request to be interrogated or cross-examined.

Respectfully submitted.

S. NICHOLSON.

I propose to introduce as witnesses the Hon. D. W. Voorhees, Senator from Indiana, Judge John Key, of Georgetown, D. C.

S. N., No. 6.

Interrogatories addressed to Rear-Admiral L. M. Powell, U. S. N., in the case of Capt. Somerville Nicholson, U. S. N., by a board in session at Washington, D. C., by order of the Hon. Secretary of the Navy, in Title XV., chapter 4, Revised Statutes of the United States.

No. 1. How long have you know Capt. S. Nicholson?—A. From his youth.

No. 2. Has Captain Nicholson sailed or served on any station or duty with you? If yea, please state when, where, and in what capacity; and did he perform his duty in an efficient manner?—A. I do not remember that Captain Nicholson has sailed or served with me on any station or duty.

No. 3. In your association with Captain Nicholson, do you or not know of your own personal knowledge of his having habits which render him unqualified for promotion, or have you reason to believe him, from your personal knowledge, given to habits of intemperance?—A. My association with Captain Nicholson has been of a society character, and I have never seen any evidence of intemperance. I have no reason, from my own knowledge, to believe him given to habits of intemperance.

No. 4. From your opportunities of judging of the general intelligence and capacity of Captain Nicholson, do you or not consider him mentally qualified for promotion?—A. I have a very high opinion of Captain Nicholson's general intelligence and capacity. I consider him mentally qualified.

No. 5. From the service you have performed together, and from your knowledge of his professional attainments, do you or not consider Captain Nicholson professionally qualified for promotion?—A. The same as to interrogatory No. 2.

No. 6. Would you, as commander of a squadron, have sufficient confidence in Capt. Somerville Nicholson to send him on an important separate service in command of a vessel of war?—A. If I was in command of a squadron and Captain Nicholson serving under my command I could determine what I would do in the premises. From my personal knowledge I know of nothing that would forbid it.

No. 7. Do you or not consider Captain Nicholson to be mentally, morally, and professionally a fit officer to perform all his duties at sea in a higher grade?—A. Mentally, certainly; morally, so far as I know; and professionally, answered as above to interrogatory No. 2.

L. M. POWELL,

Rear-Admiral United States Navy.

Subscribed and sworn to before me, this 2d March, 1878.

[L. S.]

JAMES C. DULIN,

Justice of the Peace.

S. N., No. 7.

WASHINGTON, D. C., March 5, 1878.

GENTLEMEN: Believing that the judgment in my case, as prescribed by the law pursuant to which you are acting, will be determined without prejudice, and in conformity with the law, precedent, and justice, I submit for your consideration, as the evidence has been closed, the record in support of my application for promotion to the grade of commodore, confidently believing that after duly weighing the same, it will be found I have fully proven that I am "mentally, morally, and professionally" fitted to discharge all the duties pertaining to that position, and to which I am entitled upon every principle of law and justice.

Presuming that my mental and professional fitness for promotion has been fully established to your satisfaction, the only question involved for your determination is that of alleged intemperate habits which unfit me for the promotion to which I am entitled, and as it is so momentous in its effect upon my future life and that of my family, carrying with it, on the one hand, for the residue of my official life, which at best is but a brief one, a reputation without stigma, and to be left to my children as a heritage more valuable than gold; and, on the other, attaching to me a moral stain which will injuriously affect me for all time in the estimation of my professional brethren and that of the community, with whom I have been identified from my childhood, and which will act as a professional and social ban, and be a reproach and disgrace to me and all who bear my name, it is necessary, therefore, that I should present for your consideration a sworn statement in support of my claim for promotion (and which is to be a part of this record), and respectfully request your careful attention to the same.

The authority of this board is derived through section 1496, Revised Statutes, which prescribes that "no line officer below the grade of commodore, and no officer not of the line, shall be promoted to a higher grade on the active list of the Navy until his mental, moral, and professional fitness to perform all his duties at sea in a higher grade have been established to the satisfaction of a board of examining officers appointed by the President."

As the President of the United States, under the law, is alone authorized to appoint the board, he, by virtue of his prerogative, prescribes the rules and regulations for its government; and when promulgated they become a part of the law, and as binding upon the conscience of its members as any portion of its provisions.

The rules as prescribed by the President, through the honorable Secretary of the Navy, declare that "no fact which occurred prior to the last examination of the candidate must for any purpose be inquired into or considered in any case; and the record must show as fully as may be practicable everything which assisted the board in forming

its opinion"; and, further, that "no such interrogatory, nor any question to any witness, shall, without the consent of the candidate, refer to a time prior to his last promotion; nor shall any inquiry as to matters of opinion be proposed to any officer who is his junior in rank"; and as your organization is based upon the rules referred to, every part thereof is equally binding on every member of the board, without qualification or discretion.

Section 1502 provides that "any matter on the files and records of the Navy Department touching each case which may in the opinion of the board be necessary to assist them in making up their judgment, shall, together with the whole record and finding, be presented to the President for his approval or disapproval of the finding"; and section 1503 prescribes that "no officer shall be rejected until after such public examination of himself and of the records of the Navy Department in his case unless he fails (after having been duly notified) to appear before said board."

The functions of the examining board are of a judicial character, and must adopt as a rule of action for its guidance the principles of law in their relations to evidence which govern courts of inquiry and similar military tribunals as prescribed by the statute. It is to receive the sworn testimony of witnesses and duly examine and weigh the same, throwing out that which is irrelevant or of a hearsay character, or mere general impressions of witnesses founded upon the opinions of others affecting the character of the applicant for promotion, as also any testimony bearing upon the character of the officer relating to a period of time prior to the date of his last promotion, and only to consider that proof which is direct and derived from an actual personal knowledge of the matters and things sworn to; and then, after the judgment of the board, as prescribed by section 1502, is rendered, to submit the same, with the record, to the President for his approval or disapproval.

The judgment or sentence referred to in the law can only be reached after a careful, unbiased examination of the legal evidence presented to the board for its consideration. Each member who is acting under the solemnity of his oath is to do impartial justice, divesting his mind and conscience of every personal feeling or of opinions formed outside of the evidence, and should not permit any private knowledge to influence his judgment in the case, as the members are sworn to do strict and impartial justice in the premises.

Having thus referred to the law organizing this board, the rules prescribed for its guidance, its functions, the nature of the evidence to be considered, and the force and effect of its judgment and how reached, I will now refer in detail to the nature of the evidence which has been procured by the board reflecting upon my moral character, and which it is believed is the most searching in the history of the service, so far as the number of witnesses is concerned who have been called upon to testify in my case, comprising a total of thirty-two officers of the Navy, two general officers of the Army, and five civilians, making a total of thirty-nine witnesses. Of the officers of the Navy, there were four of them rear-admirals, now comprising the active list. Three others of them are on foreign service, and two of that number are now sitting as judges in my case.

Of the number of admirals on the retired list, thirty-six, thirteen have been called upon to testify in my case, comprising, with the exception of one, all who are now residents of this city. Of the number of commodores on the active list, twenty-three, fifteen have been called upon as witnesses, and including those who have been members of the preceding board, and of those who are members of this, leaves but three to whom interrogatories have not been sent. I refer to this fact not as an objection, as I cheerfully invite the most thorough and searching scrutiny in relation to every fact and circumstance bearing upon my *present* mental, moral, and professional character and fitness for promotion, but to show that the scope and extent of the examination of my case is an *exceptional one*, as will be verified by the records of the department.

As the record of the proceedings of the first board in my case is now before you, and has been received by you as evidence, and which led to the expression of an opinion on the part of *two* of its members, after the reconsideration of that testimony upon the points of exception taken to the findings of that board by the honorable Secretary of the Navy; that their judgment was in conflict with the weight of proof in my favor; "that while I was, in a *high degree*, mentally and professionally fitted for promotion, I had failed to prove that I was morally so."

It is believed, after a careful and dispassionate consideration of that evidence, that the ruling of the majority of that board was in direct conflict with the weight of testimony bearing upon my moral character, and that the preponderance of proof in my favor *alone* should have influenced their action in determining my case.

This was the conclusion of *one* of the members of the board upon the reconsideration of the case, who found that the weight of evidence was in every way in my support, and that mere *opinions*, founded on *hearsay* declarations, and relating to a period of time *prior* to the date of my last promotion, in June, 1870, and which were unsustained by proof, would work great injury and be in violation of every principle of law

and justice, if permitted to influence the mind and conscience of those who were to sit as impartial judges in my case, and therefore, agreeably to his convictions of duty, decided that "I was mentally, morally, and professionally qualified for promotion."

Determining my case, therefore, from that standpoint, I fully proved by the weight of testimony bearing upon the question, that I was morally fitted for promotion, and no other conclusion could have been reached after comparing the evidence in support of that fact and of that against me, as it is shown that the former in every way preponderated in my favor. This was the conclusion reached by the Hon. Secretary of the Navy, an able lawyer, after a careful examination in detail of all the evidence in the case, as also by the President of the United States, who, under the law, is called upon to approve or disapprove the finding of the board, he not only having concurrent jurisdiction with the board, but also supervisory power; who, upon an investigation as a lawyer, as well as judge, of that evidence and of the law applicable thereto, *disapproved* the finding of the two members of the late board, and by that act declared that the evidence clearly proved that I was mentally, morally, and professionally qualified for promotion. In this connection it is necessary that I should read, for the information of this board, the statements prepared by me for the consideration of your predecessors, in which I refer to the evidence upon which the judgment referred to was rendered. The additional sworn statements which have been procured by this board affecting my moral character, are almost identical with those before the first board, and are not based upon *personal* knowledge, but are principally hearsay, and relate to a period of time *prior* to my last promotion (June, 1870); and therefore, agreeably to the rules of evidence and principles of law, which should govern your action, and in conformity with the ruling of the President of the United States in his disapproval of the judgment of the first board, are inadmissible, and therefore cannot be considered by you.

In my protest marked S. N., No. 1, dated March 1, 1878, against the consideration of hearsay evidence, I referred to the fact that it was ignored by all tribunals, civil and military, and referred to the authorities upon the subject, for the information of the board.

As the question is most important in its bearing upon my case, I will again read that protest, and as it embraces exceptions to the testimony of various other witnesses, it will save me the time of again referring to the same in this statement.

In addition to the authority referred to in the protest which I have just read, marked S. N., No. 2, as to the inadmissibility of hearsay evidence, which relates not to what the witness knows himself, but what he has heard from others, reference is requested to Starkie on Evidence, Part 1, page 44, and 1st Phillips on Evidence, page 185.

As the law governing the case will not admit of the consideration of this evidence, the judgment of the board, therefore, cannot be founded upon it.

Reference is also made to my protest against the consideration as *evidence* of the proceedings relating to the court-martial in my case during the month of March, 1874, which is clearly inadmissible, and can have no legal force and effect in the formation of an opinion on the part of the board, inasmuch as the remission of the entire sentence by the President of the United States, through the Secretary of the Navy, relieved me from all *stain* of the sentence pronounced by the court, and restored me to active duty; and the legal effect of such restoration was, that as the alleged offense had been fully *condoned*, and that as my disability was removed, I stood in the eye of the law as though no offense had been committed, and was therefore qualified and placed in a position to discharge my duties as a captain in the Navy, as well as those pertaining to a higher grade.*

The effect, therefore, of the pardon or remission of the sentence of the court being to restore me to all the rights I possessed prior to the proceedings of the court-martial, it is beyond the province of this board to array against me those proceedings, and permit the same to bias its judgment in forming a conclusion in this case. The law does not permit a *second punishment* for the same offense; and as the effect of the proposed action of this board in admitting as evidence those proceedings would be to produce this result, it would be repugnant to every principle of law and justice; and I cannot believe, for the reasons stated, that this board, upon reflection, will entertain any such purpose, as it would not only be an act of great wrong, but in direct conflict with the expressed opinion of the President of the United States, who was familiar with the facts relating to my case, as embraced in these very proceedings.

It is necessary to state in this connection that on Saturday, the 23d ultimo, when I appeared before the board, I stated my willingness to submit my case upon the evidence of the record of the proceedings of the first board, the same having been read in my presence and in the presence of the board, provided the board had no further testimony to produce, and requested until Monday, the 25th, at 10.30 a. m., to present my final statement; which was granted me (see record of proceedings), and I left the board, under the impression that no further testimony would be introduced.

*See opinion of Judge-Advocate-General Holt, bearing upon this question, embraced in my statement.

On Monday morning, the 25th ultimo, in obedience to instructions, I duly presented myself to the board, but was not admitted, and after remaining about four hours, expecting every moment to be called upon to present my statement, I was informed by the recorder that the president of the board had directed him to notify me that my presence would not be required until Wednesday, the 27th ultimo, as additional interrogatories would be sent out in my case, and to my astonishment I ascertained that the record of the court-martial in my case had been read and admitted as *evidence*.

On appearing before the board on Wednesday, the 27th ultimo, the proceedings of Monday, the 25th ultimo, were read, but those of Saturday, the 23d ultimo, were omitted, never having been read in my presence. I found, however, unofficially, upon an examination of the proceedings of Saturday, the 23d, that the record of the proceedings of the court-martial referred to had been admitted to record as *evidence against me*. As sections 1500 and 1503, Revised Statutes, prescribe that the officer whose case is to be acted upon shall have the right to be *present* when the records of the Navy Department, affecting his case, are examined; and as said records were examined, not publicly, as the law provides, and in *my presence*, I contend that such action is null and void, and the record, therefore, to the extent of any reference to the proceedings of the court-martial, must be expunged.

I will now proceed to comment upon the evidence now before you, bearing upon the question of *alleged* intemperate habits, embracing objections to the testimony of those officers which are not referred to in my protest of the 1st.

As to the testimony of Admiral C. R. P. Rodgers, who states in his letter to this board, in relation to the very searching interrogatories sent to him, that he can give no other than *hearsay testimony* as to any *alleged* irregularity on my part, and requests therefore to know whether, under such circumstances, he is a *competent witness*, he stating that he has not been upon duty with me for more than fifteen years, I protest against the admission of his declarations as to alleged intemperate habits, on the ground that they are in their nature made under duress and contrary to his convictions of law and justice, and after a virtual protest on his part against making them. He states we were messmates on the Coast Survey for a year or two, when I performed my duties in a most efficient and exemplary manner, and served with me for a short time in the South Atlantic squadron, but saw very little of me. He states, in answer to No. 3, that when we were messmates my habits were exemplary; since then he has *reason to believe* I am given to habits of intemperance. He states no reason inducing such an allegation nor authority for such a declaration; and as he admits that his testimony is simply *hearsay* and not founded upon personal knowledge, his testimony relating to alleged habits of intemperance is illegal and therefore inadmissible.

2d. I protest against the testimony of Commodore R. H. Wyman, who alleges that he has known me for about thirty-six years, but has no personal knowledge of any habits that would disqualify me for promotion. He states, however, that well-substantiated report accuses me of intemperance when in command. As this declaration is made upon mere hearsay, and does not specify from whom or how such information is received, it is inadmissible, and therefore should not be considered by this board.

3d. I protest against the admission of the testimony of Admiral Daniel Ammen, who swears that he has known me for twenty years or more, but has never served with me. He states that I visited the iron-clad Patapsco in November, 1862, when he commanded her, and I took passage in her from Wilmington to Philadelphia, and on that occasion I was *unmistakably intoxicated*. He further states that I visited the iron-clad Miantonomoh in Washington in the early part of 1866, when I was also *unmistakably intoxicated*. I object to his testimony for the reason that it is entirely without proof; and upon the principle of "*falsus in uno, falsus in omnibus*," it should be utterly disregarded. I desire to state that in November, 1862, as I shall prove by the records of the department and by the log-book of the United States steamer Marblehead, I was in command of the latter vessel off Charleston, on blockading duty, and as I will show by one of the members of this board now present that from some time in August, 1862, until about the 20th of December of the same year, and assert distinctly that I was never north of the latitude of Cape Henry, Virginia, from April the — until about December 20, 1862, on my passage home from Charleston, arriving in Washington December 25, 1862.

And I now further state, upon my honor as an officer and a gentleman, that I have never met Admiral Ammen when he was in command of or on duty aboard of any vessel of the Navy, with the exception, when I paid him a social visit on board the Miantonomoh, under his command, at the Washington navy-yard, as he has stated. On this occasion I was received with great kindness by Admiral Ammen, and accepted his hospitality, and to the best of my recollection I joined him in partaking of a few glasses of Rhine wine, which, I suppose, under the same circumstances, most officers would do. After leaving his ship I joined a party of ladies and escorted them to their homes in Washington. It is quite remarkable that this officer should at this late date bring up in array against me allegations as to intemperance, which, if sustained, were

under the sanctity of his own roof, while I was his guest and partaking of his hospitality, and yet having such confidence in my mental, moral, and professional fitness as an officer, that in 1871, *five years after the date of the alleged exhibition of intemperance on my part, and nearly a year after the date of my promotion to my present position*, he should have such confidence in my reputation as an officer as to have invited me to accept one of the most important positions in the Navy, chief of staff of one of the largest squadrons in the Navy, as induced from the following letter received from him, the original of which I make a part of this record :

[Confidential.]

NAVY DEPARTMENT,
BUREAU OF YARDS AND DOCKS,
Washington, D. C., March 27, 1871.

MY DEAR NICHOLSON: Admiral Lee is anxious to have a chief of staff. Be good enough to let me know if you would like the position.

Very truly, yours,

DANL. AMMEN.

Capt. S. NICHOLSON, U. S. N.

The original of which letter is herewith presented and made part of my case.

The discovery of this letter was an accidental one, and only found on the 3d instant, and the presentation of which I regard as one of the strongest points in support of my right to promotion, inasmuch as this admission as to my character as an officer was written *nearly one year after the date of my promotion to my present position*, and under the circumstances cannot be regarded a violation of confidence.

I further object to the reception of his testimony on the ground that it relates to a time *prior* to my promotion.

4th. I protest most earnestly against the reception of the testimony of Commodore D. McN. Fairfax, for the reason that his testimony is in conflict with truth and justice, and relates to occurrences *prior* to the date of my last promotion. He swears that he has known me since 1840, thirty-eight years ago, and that during that period of time he knows nothing affecting my moral character until 1870 or 1871, when I fitted out a ship of war, the *Benicia*, at Portsmouth, N. H., while he was captain and executive officer of the navy-yard; and that *twice* I was prevented from attending to my duties as captain in consequence of drinking to excess, and knows from his association with me that I have habits which unfit me for promotion.

It is quite remarkable that during the period of time which he has known me, nearly thirty-eight years, his opinion as to my unfitness for promotion should have been formed exclusively upon the two occasions when he alleges that I drank to excess.

Since 1842, with the exception of the time I was in command of the *Benicia*, then fitting out for sea, in the month of December, 1869, and in January, 1870, and for a few days in February, my association with him has been of a most limited character, and I have not been associated with Commodore Fairfax off duty or in any way since about March 2, 1870, when I sailed in the *Benicia* from Portsmouth under orders to the East Indies. The facts in the case on the two occasions referred to by Commodore Fairfax are as follows :

Soon after I took command of the *Benicia*, at the time mentioned, I was confined to my hotel in Portsmouth, N. H., with a violent and most painful attack of neuralgia in the head, and the only relief which I could obtain was through the use of narcotics. Some evil-disposed persons seized this opportunity to circulate reports that I was drinking to excess, and I believe the feeble mind of Commodore Fairfax induced him to credit this slanderous report, he not seeing me in this condition, and after I recovered from this attack I, at his invitation, dined with him, he offering me different kinds of ardent spirits and wines, which I accepted in a gentlemanly way, and he does not say that any excess was committed on this occasion. He has appended to the answer to the interrogatories of this board an addenda, explanatory as to his reason *why* he failed to report me for dereliction of duty, as it was his duty to do, to the superior officer in command, by assuming to state that he made a statement, and not by report by Commodore Winslow, that I was kept away from the yard by inability brought on by drinking. If I had violated any of the obligations imposed upon me as commanding officer of a vessel, it was his duty to have reported me officially to the commanding officer of the navy-yard; and inasmuch as he failed to discharge his duty and conform to the requirements of naval law at that time, it is inconsistent with the general fitness of things and the proprieties of the case, at this *late date*, to cast reflection upon my official character; as Commodore Winslow has long since been dead, Commodore Fairfax alone is responsible; for if the charge as now made is a valid one, I would long since have been brought to trial if the charges against me could have been sustained; and I believe that in his answer to interrogatory No. 2 he willfully and

deliberately places *it in* doubt as to the time I was fitting out the *Benicia* at Portsmouth, knowing full well that if the occurrences which he mentions took place in the *early part* of 1870, his evidence could not be received, as the sequences stated took place prior to my last promotion; but if they occurred in 1871, by the instructions from the department the evidence could be legally acted upon.

As I have thus analyzed all the evidence adduced by your board affecting in any way my moral character pertaining to the question of intemperance, I will now proceed to present for your consideration and thorough deliberation the evidence of other witnesses introduced by the board, as well as those that I have introduced in support of my moral character, in its appreciation to the question of intemperate habits; which question, it is believed, is the only one before you for consideration, and which will, I trust, after a careful and unbiased consideration of the question involved, induce the conclusion on your part that I am not only mentally and professionally, but unqualifiedly morally fitted for the promotion which I now am entitled to, as the weight of evidence proving the fact largely preponderates in my favor, and which should be binding upon the conscience of this board in the conclusion which it may reach in my case.

1st. The testimony of Admiral Almy, who states unqualifiedly that he knows nothing, after an association of many years with me, which officially and unofficially affects my reputation, or which would disqualify me for the promotion I now seek.

2d. The testimony of Rear-Admiral C. H. Poor, who swears that he has known me for many years, and considers me morally and professionally, in the general acceptance of the term, as fully qualified for promotion.

3d. The testimony of Admiral F. Stanly, who states that he has known me for fifteen years, and that I am mentally, morally, and professionally fitted for promotion.

4th. The testimony of Rear-Admiral L. M. Powell, who swears that he has known me from my youth, and that he has reason to believe that I am not given to habits of intemperance, and that I am mentally, and *certainly* morally and professionally fitted for promotion.

5th. The testimony of Rear-Admiral B. F. Sands, who swears that he has known me since I was a lieutenant, and that he believes that I am professionally, mentally, and morally fitted to the promotion to which I am entitled.

6th. The testimony of Admiral S. P. Lee, who swears that he has known me since the beginning of the late civil war, a period of more than seventeen years, and during that period of time, when I was under his command during the late war, and rendered most efficient and gallant service during a period of two years, and within that time saw me but once under the influence of liquor, and in answer to interrogatory No. 7, states that if the main feature in the service required was gallant conduct, he would place me in such command, and so far as his knowledge of my mental, moral, and professional status is concerned, I am entitled to promotion.

7th. The testimony of Admiral W. Reynolds, who swears that he has known me thirty-one years, and has served with me during a period of that time, but does not know that I have habits which disqualify me for promotion, and that my reputation as an officer and a gentleman is excellent.

8th. The testimony of Admiral T. A. Jenkins, an officer of prominence in the service, and who, from association with his fellow-officers, was in a position to acquire a general knowledge as to my moral character, who has known me for a period of many years, and who has lived in the same community with myself and family for twenty years or more, swears that *he has no knowledge* which would unfit me morally, mentally, and professionally for promotion.

9th. The testimony of Commodore J. C. Beaumont, who swears that he has known me for a period of about eighteen years, and knows nothing, of his professional knowledge, during that period of time, which would disqualify me mentally, morally, and professionally for promotion; but, on the contrary, swears unqualifiedly that I am mentally, morally, and professionally qualified for promotion.

I have thus analyzed the testimony of all the officers who have testified not only before the first board, but before your own, bearing upon the question of intemperate habits, which would disqualify me from command in a higher position, as also that which I have presented in rebuttal; and which, upon an impartial and considerate examination, will be found greatly preponderating in my favor, and therefore agreeably to the rules of evidence pursuant to which you are called upon to form your judgment.

It was never contemplated by the law organizing this board, as evidenced by the closest construction which could be placed thereon, to confer upon it the power to go *beyond* the antecedents of the officer *prior* to his last promotion, the law contemplating that the fitness of the officer for promotion to the respective grades to which he was promoted *had been fully conformed to* by the rules of the service authorizing such promotion; and, therefore, it was the intention of the law not to inquire as to his *past*, but as to his *present condition*—the time intervening from the date of his last promotion to the time he appears before your board for examination for promotion to a higher grade.

It was never contemplated or supposed by the framers of this law, when an officer appears before you for examination, that his status, save the *present*, should be considered by you; for if the reverse was the rule of action for your guidance, every fact and circumstance relating to his character from his first entry in the service could be arrayed against him, and I ask, therefore, with due consideration from your own personal knowledge, how many officers in the service could have obtained their promotion if this test had been applied to them? The test, therefore, is the moral status, the general character of the officer *from the date of his last promotion to the time he appears before you*, as to whether there are any acts or series of acts committed by him during that period of time which disqualify him for promotion; and, therefore, judging my case from a disinterested and unbiased stand-point, throwing aside all personal opinions or prejudices bearing thereon outside of the evidence adduced in my favor, it will be found that upon every principle of law and of justice I am entitled to the promotion which the law confers upon me.

Independently of the evidence referred to, I feel that it is a duty to refer to that evidence, viz, of civilians, who have been identified with me almost daily for the last seven or eight years, and who are familiar with my habits and associations, who have testified as to my moral qualities, that is, as to the question of intemperate habits, and who swear to the fact that I am not addicted to such habits. The first of these is Senator D. W. Voorhees, who solemnly swears to the fact that he has known me for ten or twelve years, and knows of no habits on my part which would unfit me for promotion; he being intimately identified with me during that period of time. He further swears that if he were a large owner in a steamship company, or the owner of a large vessel with a valuable cargo, he would, based upon his own personal knowledge, and of my high reputation as officer, trust me with the command of such vessel, even if it contained his wife and children; a more precious charge than any other cargo which could be placed under his (my) control.

I also refer to the testimony of Judge John J. Key, who has known me intimately since 1873, and has known me as a neighbor, socially and intimately, since that period of time, and has heard of me by reputation since 1862, who swears that I am not addicted to habits of intemperance, but that I enjoy in a high degree a moral and exemplary reputation; and in this connection reference is particularly requested to his testimony in detail.

I have thus concluded the analysis of the testimony before the first board and that of your own, and desire to state in conclusion, that in no sense can the authority of this board include the province or the authority of a court-martial, so as to punish, suspend, or deprive an officer of promotion on account of any wrong act or conduct on his part, as it would be in conflict with the sixth section of the act of July 15, 1870, section 1456, Revised Statutes, which prescribes "that no officer of the Navy shall be placed on the retired-list because of misconduct; but he shall be brought to trial by court-martial for such misconduct;" and in this connection, bearing upon the scope and authority of examining boards, I desire to read for the information of the board two decisions rendered by the Navy Department, one of date April 28, 1873, and one of February 25, 1874, bearing upon the subject; the correctness of which will be verified by reference to the recorder, who has the originals in his possession. These opinions are not alone of the department, but emanate directly from the President of the United States through the Secretary of the Navy, who, under the law, has the exclusive authority to appoint examining boards, to prescribe the rules for their guidance, and to define the rules of law applicable thereto, as also to dissent from their conclusions.

Having thus concluded my final statement, I cheerfully submit it for your consideration, believing that your judgment will be strictly impartial and in conformity with law and justice.

Respectfully submitted.

S. NICHOLSON,
Captain, United States Navy.

To the PRESIDENT and GENTLEMEN of the Naval Examining Board,
Washington, D. C.

Subscribed and sworn to before me this 5th day of March, A. D. 1878.

JAMES C. DULIN,
Justice of the Peace.

NAVY DEPARTMENT,
Washington, February 25, 1874.

SIR: The record of proceedings of the Naval Examining Board in the case of Capt. William Ronckendorff are referred back to the board.

I have carefully read and considered the testimony, record, and answers in this case, and am constrained to say that the effect of these seems to me to be wholly insufficient to warrant an affirmative conclusion against Captain Ronckendorff upon a point the

substantial decision of which, however carefully avoided in language, cannot fail to be understood as deciding his case and as seriously affecting his personal and professional standing.

The single incident referred to by Admiral Bailey is uncertain in character and most imperfect in details, and its real nature, it seems to me, is fairly revealed by the fact that it passed, during the long interval since its occurrence, entirely unacted upon, unnoticed, unremarked, and even unremembered with the present occasion.

All the other testimony adverse to Captain Ronckendorff, shown on the record, consists of the general and inferential opinions of one or two officers, founded in part, perhaps, upon the incident above referred to, and certainly overborne by the weight of favorable testimony in the case.

Under these circumstances, although the Secretary has no power to constrain the action of the board in this or any other case, and certainly has no desire to influence their decision without convincing their judgment, he feels it to be his duty to so refer the case to them for further examination.

Respectfully,

GEO. M. ROBESON,
Secretary of the Navy.

Addressed to Commodore WM. E. LEROY,
President Naval Examining Board, Washington, D. C.

NAVY DEPARTMENT, April 28, 1873.

SIR: The record of examination and the case of Captain Clitz is referred to the examining board, with the remark that the formal finding of the board, signed by all the members, is, in the opinion of the Secretary, wholly contradicted and nullified by the recommendation and expression of opinion which follows it, signed by a majority of the board. This board is in no sense a court-martial, and has no power to *punish or suspend or deprive an officer of promotion* on account of any wrong act or conduct on his part; this is not only clear on principle, but it is expressly confirmed by the effect of the sixth section of the act of July 15, 1870 (1456).

The power of the board consists in finding whether an officer, not because he has or has not done any particular thing, but by reason of the condition of his mental, moral, and professional character, resulting from having done or not done certain things, has or has not, as a quality, condition, or habit, the mental, moral, and professional fitness required to perform the regular duties of the grade to which he is to be promoted.

Particular acts or conduct are only material, in this consideration, to the extent that they go to evidence the mental, moral, or professional quality, condition, or habit which possesses and make the past of the individual. Thus, particular instances of intemperance, however glaring and unjustifiable, are to be considered by the board *not* in their criminal light for the punishment, or for the purpose of saying whether or not the officer committing them deserves promotion, but only to the extent that they make or evidence a *condition of character of habitual drunkenness*; and certainly no board can properly say that an officer is *not* morally qualified by reason of a habit of intemperance; and it is the condition of his character and *not his particular act* that they must find and act upon, when, at the same time, a majority of the board declares that, in their opinion, he is an efficient officer, and that, in their belief, he is *not habitually* an intemperate man. This is the condition of the recommendations of this case; and, while the Secretary cannot consider this a recommendation for promotion, he certainly cannot approve the recommendation of the board, founded in fact for its legal support by a finding by the board that the officer is habitually intemperate, when a majority of the board declare expressly that they do not think he has that habit.

In regard to the testimony of junior officers, the Secretary is of opinion it would be better that juniors should be asked in the future to send facts only.

If the board think that Captain Clitz has been guilty of particular acts of intemperance, though they do not think him habitually intemperate, the department, on this appearing, can order a court-martial to investigate and punish these offenses; and any officer having knowledge of such instances should have reported them to the department for judicial investigation according to law, and not merely make them the foundation of an opinion given in a case when particular acts are not to be investigated.

Respectfully,

GEO. M. ROBESON,
Secretary of the Navy.

Addressed to Rear-Admiral JOHN RODGERS,
President of Naval Examining Board.

S. N., No. 8.

I object to the testimony of Admiral Selfridge, who alone pretends to charge me with being in any degree under the influence of liquor during the years that have elapsed since my last promotion. This officer (with the exception of a few months) has been a resident of Georgetown, in this District, where I live, and has been my near neighbor most of this time, meeting almost daily. He testifies that he has seen me partially inebriated once or twice—once in a horse-car in 1877; but cannot testify as to either time or place in regard to the other instance.

In my opinion such testimony is too vague and indefinite to be received, as it is a rule of law that all legal testimony must be sufficiently clear and definite to admit of proper defense.

I must, therefore, object to the reception of this testimony; and, furthermore, I believe I could justly object on the ground that he is an interested witness, having two sons in the Navy junior in rank to me, who would be benefited by my retirement.

S. N., No. 9.

EBBITT HOUSE,
Washington, D. C., March 10, 1875.

MY DEAR SIR: Since my return from the command of the South Atlantic station I have learned that there was some question about your attention to the repairs of the flag-ship Lancaster, of the Brazil squadron, while you were in command of her.

It affords me great pleasure to be able to state that while the Lancaster was under repairs at Rio de Janeiro you gave your whole attention to the work going on day and night. You did all in your power to see that the work was well done, and done as expeditiously as possible. I do not think that you were out of the ship at any time for two hours. No officer could have done, under the circumstances, more for the interest of the government than you did.

I send you this letter, feeling it a duty as your commanding officer at the time.

Very respectfully,

J. H. STRONG,
Rear-Admiral, United States Navy.

Capt. S. NICHOLSON.

SWORN STATEMENT OF CAPT. SOMERVILLE NICHOLSON, U. S. N., SUBMITTED TO THE NAVAL EXAMINING BOARD MARCH 5, 1878.

WASHINGTON, D. C., March 5, 1878.

To the President and Gentlemen of the Naval Examining Board:

GENTLEMEN: Believing that the judgment in my case, as prescribed by the law pursuant to which you are acting, will be determined without prejudice, and in conformity with law, precedent, and justice, I submit for your consideration (as the evidence has been closed) the record in support of my application for promotion to the grade of commodore, confidently believing that, after duly weighing the same, it will be found that I have fully proven that I am "mentally, morally, and professionally" fitted to discharge all the duties pertaining to that position, and to which I am entitled upon every principle of law and justice.

Presuming that my mental and professional fitness for promotion has been fully established to your satisfaction, the only question involved for your determination is that of alleged intemperate habits, which unfit me for the promotion I am entitled to; and as it is so momentous in its effect upon my future life, and that of my family—carrying with it, on the one hand, for the residue of my official life (which, at best, is but a brief one), a reputation without stigma, to leave to my children as an heritage more valuable than gold; and, on the other, attaching to me a moral stain, which will injuriously affect me for all time in the estimation of my professional brethren, and that of the community with whom I have been identified from childhood, and which will act as a social ban, and be a reproach and a disgrace to me and all who bear my name—it is necessary, therefore, that I should present for your consideration a sworn statement in support of my claim for promotion, and which is to be a part of this record, and respectfully request your careful attention to the same.

The authority of this board is derived from section 1496, Revised Statutes, which prescribes that no line officer below the grade of commodore, and no officer not of the line, shall be promoted to a higher grade on the active list of the Navy until his men-

tal, moral, and professional fitness to perform all his duties at sea, of a higher grade, has been established to the satisfaction of a board of examining officers appointed by the President. As the President of the United States, under the law, is alone authorized to appoint the board, he, by virtue of his prerogative, prescribes all rules and regulations for its action, and, when promulgated, they become a part of the law, and as binding upon the conscience of its members as any portion of its provisions.

The rules as prescribed by the President, through the Hon. Secretary of the Navy, declare that no fact which occurred *prior* to the last examination of the candidate *must, for any purpose*, be inquired into, or considered in any case; and the record must show, as fully as may be practicable, everything which assisted the board in forming its opinion; and, further, that no such interrogatory, or any questions to any witness, *shall, without the consent of the candidate, refer to a time prior to his last promotion*, nor shall an inquiry as to matters of opinion be proposed to any officer who is his junior in rank; and, therefore, as your organization is based upon the rules referred to, every part thereof is equally binding on every member of the board, without qualification or discretion.

Section 1502 prescribes that any matter on the files and records of the Navy Department touching each case, which may, in the opinion of the board, be necessary to assist them in making up their judgment, shall, together with the whole record and finding, be presented to the President for his approval or disapproval of the finding. And section 1503 prescribes that no officer shall be rejected until after such public examination of himself, and of the records of the Navy Department in his case, unless he fails, after being duly notified, to appear before such board.

The functions of an examining board are of a judicial character, and it must adopt as a rule of action for its guidance the principles of law in their relation to evidence, which govern courts of inquiry, and similar military tribunals, as prescribed by the statutes. It is to receive the sworn testimony of witnesses, and duly examine and weigh the same, throwing out that which is irrelevant and of a hearsay character, or mere general impressions of witnesses founded upon the opinions of others affecting the character of the applicant for promotion, as also any testimony bearing upon the character of the officer relating to a period of time prior to the date of his last promotion, and only to consider that proof which is direct, and derived from an actual personal knowledge of the matters and things sworn to; and then, after the judgment of the board, as prescribed by section 1502, is rendered, to submit the same, with the record, to the President for his approval or disapproval. The "*judgment*," or sentence, referred to by the law, can only be reached after a careful, unbiased examination of the legal evidence presented to the board for its consideration. Each member, who is acting *under the solemnity of his oath*, is to do impartial justice, divesting his mind and conscience of every personal feeling or opinion formed outside of the evidence, and should not permit any private knowledge to influence his judgment in the case, as the members are sworn to do strict and impartial justice in the premises.

Having thus referred to the law organizing this board, and the rules prescribed for its guidance, its functions, the nature of the evidence to be considered, the effect of its judgment, and how reached, I will now refer in detail to the nature of the evidence which has been procured by the board reflecting upon my moral character, and which it is believed is the most searching in the history of the service, so far as the number of witnesses is concerned, who have been called upon to testify in my case, comprising a total of thirty-two officers of the Navy, two general officers of the Army, and five civilians, making a total of thirty-nine witnesses. Of the officers of the Navy, there were four out of the ten rear-admirals now comprising the active list; three others are on foreign service, and two are now sitting as judges in my case. Of the number of rear-admirals on the retired list (thirty-six), thirteen have been called to testify in my case, comprising, with the exception of one, all who are now residents of this city. Of the number of commodores on the active list (twenty-three), fifteen have been called as witnesses; and, including those who have been members of a preceding board and those who are members of this board, but three remain to whom interrogatories have not been sent.

I refer to this fact, not as an objection, as I cheerfully invite the most thorough and searching scrutiny in relation to every fact and circumstance bearing upon my present mental, moral, and professional character and fitness for promotion, but to show that the scope and extent of the examination in my case is an exceptional one, as will be verified by the records of the department.

As the record of the proceedings of the first board in my case is now before you, and has been received by you as evidence, and which led to the expression of opinion on the part of two of its members after the reconsideration of that testimony upon the points of exception taken to the findings of the board by the Hon. Secretary of the Navy, that their judgment was in conflict with the weight of proof in my favor,—that while "I was in a high degree mentally and professionally fitted for promotion, I had failed to prove that I was morally so," it is believed, after a careful and dispassionate consideration of that evidence, that the ruling of the majority of two of that

board was in direct conflict with the weight of testimony bearing upon my moral character, and that the preponderance of proof in my favor *alone* should have influenced their action in determining my case. This was the conclusion of one of the members of the board, upon the reconsideration of the case, he finding that the weight of evidence was in every way in my support, and that mere opinions founded on hearsay declarations, and relating to a period of time prior to the date of my last promotion in June, 1870, and which were unsustained by proof, would work great injury, and be in violation of every principle of law and justice, if permitted to influence the mind and conscience of those who were to sit as impartial judges in my case, and, therefore, agreeably to his convictions of duty, decided that I *was* mentally, morally, and professionally qualified for promotion.

Determining my case, therefore, from that standpoint, I fully proved, by the weight of testimony bearing upon the question, that I *was* morally fitted for promotion; and no other conclusion could have been reached after hearing the evidence in support of that fact, and of that against me, as it is shown that the former in every way preponderated in my favor.

This was the conclusion reached by the Hon. Secretary of the Navy, an able lawyer, after a careful examination in detail of all the evidence in the case, as also by the President of the United States, who, under the law, is called upon to approve or disapprove the finding of the board, he not only having concurrent jurisdiction with the board, but also supervisory power; and who, upon an investigation as a lawyer as well as judge of that evidence and of the law applicable thereto, disapproved the finding of the two members of the late board, and by that act declared that the evidence clearly proved that I *was* "mentally, morally, and professionally" qualified for promotion.

In this connection it is necessary that I should read for the information of this board the statement prepared by me for the consideration of your predecessors, in which I refer to the evidence upon which the judgment referred to was rendered. The additional sworn statements which have been procured by this board affecting my moral character are almost identical with those before the first board, and are not based upon personal knowledge, but are from hearsay, and relate to a period of time prior to my last promotion, in June, 1870; and, therefore, agreeably to the rules of evidence and principles of law which should govern your action, and in conformity with the ruling of the President of the United States, in his disapproval of the judgment of the first board, are inadmissible, and therefore cannot be considered by you.

In my protest against the consideration of hearsay evidence, I referred to the fact that it was ignored by all tribunals, civil and military, and referred to authorities upon the subject for their information and benefit. As the question is most important in its bearing on my case, I will again read that protest, and as it embraces exceptions to the testimony of various other witnesses, it will save me the time of again referring to the same in this statement:

WASHINGTON, D. C., March 1, 1878.

To the President and Gentlemen of the Naval Examining Board, Washington, D. C.:

GENTLEMEN: When the respective replies of the several officers to the interrogatories sent out by this board were read on the 27th for its information, I entered my protest against the consideration of those answers referring to my moral character which were not founded upon personal knowledge, but which were based exclusively upon the hearsay declaration of persons who were not named by them, or upon mere idle rumor, on the ground that such testimony was inadmissible, and being in conflict with the law governing the case.

In addition to the objection stated, I further protest against the consideration of any answer relating to facts and circumstances occurring prior to my last examination, June, 1870, when I was promoted to my present position, as being in conflict with the instructions of the department, prescribed by the President of the United States, through the Secretary of the Navy, for the guidance of examining boards; *vide* section 1496, providing for the appointment of such boards by the President, and who, by virtue of his authority, prescribes the rules which shall govern them in their official action.

The fact is recognized that its functions are of a judicial character, and that the principles of law governing courts of inquiry, and similar military tribunals, are equally applicable to examining boards. It is necessary, therefore, that I should refer to the law applicable to "*hearsay testimony*," in support of my protest against the consideration of this class of testimony. "Benét on Military Law and Court-Martial," a recognized authority in our own country, in defining "*hearsay evidence*," uses the following language:

"HEARSAY EVIDENCE.—The term *hearsay evidence* is used with reference both to that which is written, and to that which is spoken. But in its legal sense it is confined to that kind of evidence which does not derive its effects solely from the credit to be attached to the witness himself, but rests also in part on the veracity and competency of some

other person, from whom the witness may have received his information. The general rule is, that HEARSAY EVIDENCE IS NOT RECEIVABLE. It is inadmissible on two grounds: First, that the party *originally* stating the facts does not make the statement under the sanctity of an oath; and, secondly, that the party against whom the evidence is offered would lose the opportunity of examining into the means of knowledge of the party making the statement. By our articles of war, every fact for or against a prisoner must be proved on oath,* and by the Constitution the accused must 'be confronted with the witnesses against him.†

"Besides these tests, it must be considered that such evidence is very liable to be fallacious, from the facility with which it may have been imperfectly heard, or from having been misunderstood or inaccurately remembered, or perhaps perverted, or possibly altogether fabricated. It is to be observed also, that persons communicating such evidence are not subject to the danger of a prosecution for perjury; for where the hearsay statement is said to have been made when no third person was present, the witness has no cause to be apprehensive of punishment, even though he has entirely fabricated the statement."‡

As the conclusions reached by this authority are founded on well-defined principles of law, recognized and adopted by all the military courts of our country, and which must be received and recognized by this board as a rule of action for its guidance, I will proceed to enter my objections *seriatim* to the respective answers above referred to, and insist that they should be thrown out by the board as inadmissible.

1st. I protest against the reception of the testimony of Admiral T. O. Selfridge, who swears that he has never served with me and has only been associated with me as a neighbor; and states that he has seen me partially inebriated once or twice, once in a horse-car in 1877, but is at fault as to the other, not recollecting time or place. In this case his memory shows a remarkable degree of treachery, recollecting that I was partially inebriated on one occasion, which he recollects with distinctness, but is ignorant as to the other occasion, and concluded that my general reputation is that I am an intemperate officer, failing to state the reasons inducing this opinion, from what source or whether it is reliable, and which is a very remarkable conclusion, after admitting his failure to prove the second time that I was partially inebriated, although he was my neighbor for eighteen months, being next door to me, and resided in the same city with me for seven or eight years; and I was well known to him during that time.

2d. In the matter of the reception of the evidence of Commodore R. W. Shufeldt, while he fully indorses me, I protest against his evidence, for the reason that at the only time he ever saw me under the influence of liquor was antecedent to the date of my last examination, and therefore is not admissible under the rules as presented by the President for the government of examining boards.

3d. I protest against the reception of the testimony of Com. J. C. Febiger, on the ground that, while he has known me for a number of years, he has no personal knowledge that I am given to habits of intemperance; and yet he declares that my reputation as an officer is not good, without specifying the source inducing the declaration.

4th. I enter my protest against the reception of the testimony of Commodore Andrew Bryson, on the ground that, while he declares he has never served with me and has no knowledge of my qualities, and has only known me since 1874, four years ago, he *believes* that I am given to habits of intemperance. As the belief is founded upon mere opinion, and the source of his information is not stated, and relates to a period of time antecedent to my last examination, it is therefore under the prescribed rule inadmissible. •

5th. I protest against the reception of the testimony of Commodore R. N. Stemple, who, while he swears he has known me thirty-nine years, and served with me three years on the Brandywine, and has no personal knowledge that I am given to habits of intemperance, yet believes I am given to such habits. As this declaration is founded upon information acquired from other sources, (although he served with me for three years, and has known me for thirty-eight, and has no personal knowledge of such habits,) it is, therefore, inadmissible.

As the objections stated to the reception of the evidence referred to are in conformity with law and precedent, I respectfully submit the same for your consideration and favorable action.

Respectfully submitted.

S. NICHOLSON,
U. S. Navy.

In addition to the authorities referred to in the protest which I have just read as to the inadmissibility of hearsay evidence which relates *not to what the witness knows himself, but what he has heard from others*, reference is requested to Starkie on Evidence,

* 73d Article of War.

† 11th Amendment to the Constitution.

‡ 1 Phillips, 212.

part 1, p. 44, and 1 Phillips on Evidence, p. 185; and, therefore, as the law governing the case will not admit of the consideration of this evidence, the judgment of the board cannot be founded upon it.

Reference is also made to my protest against the consideration, as evidence, of the proceedings relating to the court-martial in my case, during the month of March, 1874, which is clearly inadmissible, and can have no legal force and effect in the formation of an opinion on the part of the board, inasmuch as the remission of the entire sentence by the President of the United States, through the Secretary of the Navy, relieved me from all stain of the sentence pronounced by the court, and restored me to active duty; and the legal effect of such restoration was, that as the alleged offense had been fully *condoned*, and as my disability was removed, I stood, in the eye of the law, as though no offense had been committed, and, therefore, was qualified, and placed in a position to discharge my duties as captain in the Navy, as well as those pertaining to a higher grade. (See opinion of Judge-Advocate-General Holt, bearing upon this question, and embraced in my statement submitted to the first examining board.)

The effect, therefore, of the pardon or remission of the sentence of the court being to restore me to all the rights I possessed prior to the proceedings of the court-martial, it is beyond the province of this board to array against me those proceedings, and permit the same to bias its judgment in forming a conclusion in this case.

The law does not permit a second punishment for the same offense. And as the effect of the proposed action of this board, in admitting as evidence those proceedings, would be to produce this result, it would be repugnant to every principle of law and justice; and I cannot believe, for the reasons stated, that this board, upon reflection, will entertain any such purpose, as it would not only be an act of great wrong, but in direct conflict with the expressed opinion of the President of the United States, who was familiar with the facts relating to my case, as embraced in those very proceedings.

It is necessary to state, in this connection, that on Saturday, the 23d ultimo, when I appeared before this board, I stated my willingness to submit my case upon the evidence and the proceedings of the first board, the same having been read in my presence and in the presence of the board, provided the board had no further evidence to produce, and requested until Monday, the 25th ultimo, 10.30 a. m., to present my final statement which was duly granted (see record of proceedings), and I left the board under the impression that no further testimony would be introduced. On Monday morning, the 25th ultimo, in obedience to instructions, I duly presented myself to the board, but was not admitted, and after remaining about four hours, expecting every moment to be called upon to present my statement, I was informed by the recorder that the president of the board had directed him to notify me that my presence would not be required until Wednesday, the 27th ultimo, as additional interrogatories would be sent out in my case; and, to my astonishment, I ascertained that the record of the court-martial in my case had been read and admitted as evidence. On appearing before the board, on Wednesday, the 27th ultimo, the proceedings of Monday, the 25th ultimo, were read, but those of Saturday, the 23d ultimo, were omitted, never having been read in my presence. I found, however, unofficially, upon an examination of the proceedings of Saturday, the 23d, that the record of the proceedings of the court-martial referred to had been admitted to record as evidence against me. As sections 1500 and 1603, Revised Statutes, prescribe that the officer whose case is to be acted on shall have the right to be present, and that the records of the Navy Department affecting his case are to be examined, and as said records were examined, not publicly, as the law provides, and in my presence, I contend that such action is null and void, and the record, therefore, to the extent of any reference to the proceedings of the court-martial, must be expunged.

I will now proceed to comment upon the evidence before you bearing upon the question of alleged intemperate habits, embracing objections to the testimony of those officers who are not referred to in my protest.

1st. As to the testimony of Rear-Admiral C. R. P. Rodgers, who states in his letter to the board dated February 26, 1878, in response to the very searching interrogatories sent to him, that he can give no other than hearsay testimony as to any alleged irregularity on my part, and requesting, therefore, to know whether, under such circumstances, he is a competent witness, he stating that he has not been upon duty with me for more than fifteen years. I protest against the admission of his declarations as to alleged intemperate habits, on the ground that they are in their nature made under duress, and contrary to his convictions of law and justice, and after a virtual protest on his part against making them. He states we were messmates on the Coast Survey for a year or two, when I performed my duties in a most efficient and exemplary manner, and served with me for a short time in the South Atlantic squadron, but saw very little of me. He states, in answer to interrogatory No. 3, that when we were messmates my habits were exemplary, but since then he has reason to believe I am given to habits of intemperance. He states no reason inducing such allegation, nor authority for such declaration, and as he admits that his testimony is simply hearsay, and not founded

upon personal knowledge, his testimony relating to alleged habits of intemperance is illegal, and therefore inadmissible.

2d. I protest against the testimony of Commodore R. H. Wyman, who alleges that he has known me for about thirty-six years, but has no personal knowledge of any habits which would disqualify me for promotion. He states, however, that well-substantiated report accuses me of intemperance when in command. As this declaration is made upon mere hearsay, and does not specify from whom or how such information is received, it is inadmissible, and therefore should not be considered by this board.

3d. I protest against the admission of the testimony of Admiral Daniel Ammen, who swears that he has known me for twenty years or more, but has never served with me. He states that I visited the iron-clad *Patapsco* in November, 1862, when he commanded her, and that I took passage in her from Wilmington to Philadelphia, and on that occasion I was unmistakably intoxicated. He further states that I visited the iron-clad *Miantonomoh*, in Washington, in the early part of 1866, when I was also unmistakably intoxicated. I object to his testimony for the reason that it is entirely without proof, and upon the principle of "*falsus in uno, falsus in omnibus*," it should be entirely disregarded.

I desire to state that in November, 1862, as I shall prove by the records of the department and by the log-book of the United States ship *Marblehead*, I was in command of the latter vessel off Charleston, on blockading duty; and, as I will show by one of the members of this board, now present, I was there from some time in August, 1862, until about the 20th of December of the same year. And I assert most distinctly that I was never north of the latitude of Cape Henry, Virginia, from some time in April until about December 20, 1862, when, on my passage home from Charleston, I arrived at Washington, December 25, 1862. And I now further state, upon my honor as an officer and a gentleman, that I have never met Admiral Ammen when he was in command of, or on duty on board of, any vessel of the Navy, with the exception of the time when I paid him a social visit on board the *Miantonomoh*, under his command at the Washington navy-yard, as he states. On this occasion I was received with great kindness by Admiral Ammen, and accepted his hospitality, and, to the best of my recollection, I joined him in partaking of a few glasses of Rhine wine, which I suppose, under the same circumstances, most officers would do. After leaving his ship, I joined a party of ladies and escorted them to their homes in Washington. It is quite remarkable that this officer should, at this late date, bring up in array against me allegations as to intemperance which, if sustained, was under the sanctity of his own roof, while I was his guest and partaking of his hospitality, and yet, having such confidence in my mental, moral, and professional fitness as an officer, that in 1871, five years after the date of the alleged exhibition of intemperance on my part, and nearly a year after the date of my promotion to my present position, he having such confidence in my reputation as an officer, was led to invite me to accept one of the most important positions in the Navy, that of chief of staff of a large squadron, as evidenced from the following letter received from him, the original of which I make a part of this record:

"NAVY DEPARTMENT, BUREAU OF YARDS AND DOCKS,
Washington, D. C., 27th March, 1871.

"Admiral Lee is anxious to have a chief of staff. Be good enough to let me know if you would like the position.

"Very truly yours,

"DANIEL AMMEN.

"Capt. S. NICHOLSON,
"U. S. N., Georgetown."

The original of which letter is herewith presented, and made part of my case. The discovery of this letter was an accidental one, and it was only found on the 3d instant, and the presentation of which I regard as one of the strongest points in support of my right to promotion, inasmuch as this admission of my character as an officer was written nearly one year after the date of my promotion to my present position, and, under the circumstances, cannot be regarded as a violation of confidence. I further object to the reception of his testimony on the ground that it relates to a time prior to my last promotion.

4th. I protest most earnestly against the reception of the testimony of Commodore D. McN. Fairfax, for the reason that it is in conflict with truth and justice, and relates to alleged occurrences prior to the date of my last promotion. He swears that he has known me since 1840, thirty-eight years ago; and that during that period of time he knows nothing affecting my moral character until 1870 or 1871, when I fitted out a ship of war—the *Benicia*—at Portsmouth, while he was captain and executive officer of the navy-yard; and that twice I was prevented from attending to my duties as captain in consequence of drinking to excess, and knows, from his association with me, that I have habits which unfit me for promotion.

It is quite remarkable that, considering the period of time he has known me, nearly

thirty-eight years, his opinion as to my unfitness for promotion should have been formed exclusively upon the two occasions when he alleges that I drank to excess. Since 1842, with the exception of the time I was in command of the Benicia at Portsmouth, then fitting out for sea, in the month of December, 1869, and in January, 1870, and for a few days in February, my association with him has been of the most limited character, and I have not been associated with him, off duty or in any way; since about March 2, 1870, when I sailed in the Benicia from Portsmouth, under orders to the East Indies.

The facts in the case, on the two occasions referred to by Commodore Fairfax, are as follows: Soon after I took command of the Benicia, at the time mentioned, I was confined to my hotel in Portsmouth, New Hampshire, with a violent and most painful attack of neuralgia of the head, and the only relief which I could obtain was through the use of narcotics. Some evil-disposed person seized this opportunity to circulate reports that I was drinking to excess, and I believe the feeble mind of Commodore Fairfax induced him to credit this slanderous report, he not seeing me in this condition. After I recovered from the attack, I, at his invitation, dined with him, he offering me different kinds of ardent spirits and wines, which I accepted in a gentlemanly way, and he does not say that any excess was committed on this occasion. He has appended to the answer to the interrogatories of this board an *addenda*, explanatory of the reasons why he failed to report me for dereliction of duty, as it was his duty to do, to the superior officer in command, assuming to state that he made a statement (and not by report) to Commodore Winslow, that I was kept away from the navy-yard by inability brought on by drinking. If I had violated any of the obligations imposed upon me as commanding officer of the vessel, it was his duty to have reported me officially to the commanding officer of the navy-yard; and, inasmuch as he failed to discharge his duty and conform to the requirements of naval law at that time, it is inconsistent with the general fitness of things and the proprieties of the case, at this late date, to cast reflections upon my official character. As Commodore Winslow has long been dead, Commodore Fairfax alone is responsible; for, if the charge as now made is a valid one, I would long since have been brought to trial if the charges against me could have been sustained. And I believe, in his answer to interrogatory No. 2, he willfully and deliberately places it in doubt as to the time I was fitting out the Benicia at Portsmouth, knowing full well that if the occurrences which he mentions took place in the early part of 1870, his evidence could not be received, as the occurrences stated took place prior to my last promotion; but if they occurred in 1871, under the instructions of the department, the evidence could be legally acted upon.

As I have thus analyzed all the evidence adduced by your board affecting in any way my moral character pertaining to the question of intemperance, I will now proceed to present for your consideration and thorough deliberation the evidence of other witnesses introduced by the board, and those that I have introduced in support of my moral character, in its application to the question of intemperate habits, which question, it is believed, is the only one before you for your consideration, and which, I trust, after a careful and unbiased consideration of the question involved, will induce the conclusion on your part that I am not only mentally and professionally, but unqualifiedly morally, fitted for the promotion which I now am entitled to, as the weight of evidence proving the fact largely preponderates in my favor, and which should be binding upon the conscience of this board in the conclusions which it may reach in my case.

First. The testimony of Admiral Almy, who states unqualifiedly that he knows nothing, after an association of many years with me, officially and unofficially, which affects my reputation or which would disqualify me for promotion to a higher grade.

Second. The testimony of Rear-Admiral C. H. Poor, who swears that he has known me for many years, and considers me morally and professionally, in the general acceptance of the term, as fully qualified for promotion.

Third. The testimony of Admiral F. Stanly, who states that he has known me for fifteen years, and that I am mentally, morally, and professionally fitted for promotion.

Fourth. The testimony of Rear-Admiral L. M. Powell, who swears that he has known me from my youth, and that he has reason to believe that I am not given to habits of intemperance, and that I am mentally, professionally, and morally fitted for promotion.

Fifth. The testimony of Rear-Admiral B. F. Sands, who swears that he has known me since I was lieutenant, and that he believes I am professionally, mentally, and morally fitted for the promotion to which I am entitled.

Sixth. The testimony of Admiral S. P. Lee, who swears that he has known me since the beginning of the late civil war, a period of more than seventeen years, and during that time I was under his command (during the late war), and rendered most efficient and gallant service for a period of two years, and within that time he saw me but once under the influence of liquor. And, in answer to interrogatory No. 7, he states that if the main feature required in the service was gallant conduct, he would place me in such command; and, so far as his knowledge of my mental, moral, and professional fitness is concerned, I am entitled to promotion.

Seventh. The testimony of Admiral W. Reynolds, who swears that he has known me thirty-one years, and has served with me during a part of that time, but does not know that I have habits which disqualify me for promotion, and that my reputation as an officer and gentleman is excellent.

Eighth. The testimony of Admiral T. A. Jenkins, an officer of prominence in the service, and who from association with his fellow-officers was in a position to acquire a general knowledge as to my moral character, and who has known me for a period of many years, and who has lived in the same community with myself and family for twenty years or more, swears that he has no knowledge of anything which would unfit me morally, mentally, or professionally for promotion.

Ninth. The testimony of Commodore Beaumont, who swears that he has known me for a period of about eighteen years, and knows nothing of his personal knowledge during that period of time which would disqualify me mentally, morally, or professionally for promotion; but, on the contrary, swears unqualifiedly that I am mentally, morally, and professionally fitted for promotion.

Tenth. The testimony of Admiral William Radford, who stated that he has known me since 1842, when I served with him, and that also I served under his command at the Washington navy-yard as a commander, during the years 1866, 1867, and 1868, who states that I am an efficient officer, and that he knows nothing against my moral, mental, or professional character which unfits me for promotion. I desire to state that this officer was my next-door neighbor from April, 1873, and since the date of my last promotion, to some time in 1877, and during that time had almost daily opportunities of judging of my character.

NOTE.—The reference to the testimony of Admiral Radford, which was read before the board, was accidentally omitted from my sworn statement, submitted on the 5th instant.

I have thus analyzed the testimony of all the officers who have testified, not only before the first board but before your own, bearing upon the question of intemperate habits which would disqualify me from commanding in a higher position, as also that which I presented in rebuttal, and which, upon an impartial and considerate examination, will be found greatly preponderating in my favor; and, therefore, agreeably to the rules of evidence pursuant to which you are called upon to form your judgment exclusively, proves that I am entitled to promotion.

It was never contemplated by the law organizing this board, as evidenced by the closest construction which could be placed thereon, to confer upon it the power to go into the antecedents of an officer *prior* to his last promotion, the law contemplating that the fitness of an officer for promotion to the respective grade to which he was promoted had been fully conformed to by the rules of the service authorizing such promotion; and therefore it was the intention of the law not to inquire as to his past, but as to his *present condition*—the time intervening from the date of his last promotion to the time he appears before your board for examination for promotion to a higher grade. It was never contemplated or supposed by the framers of this law that, when an officer appears before you for examination, his status, save the *present*, should be considered by you; for, if the reverse was the rule of action for your guidance, every fact and circumstance relating to his character from his first entry into the service could be arrayed against him; and I ask, therefore, with all due consideration, from your own personal knowledge, how many officers in the service could have obtained their promotion if this test had been applied to them?

The test, therefore, is the moral status and general character of the officer *from the date of his last promotion to the time he appears before you*, as to whether there are any acts or series of acts committed by him during that period of time which disqualify him for promotion. And, therefore, judging my case from a disinterested and unbiased standpoint, and throwing aside all personal opinions or prejudice bearing thereon outside of the evidence adduced in my favor, it will be found, upon every principle of law and of justice, I am entitled to the promotion which the law confers upon me.

Independent of the evidence referred to, I feel it a duty to refer to the evidence of civilians who have testified in my case, and who have been identified with me almost daily for the last seven or eight years, and who are familiar with my habits and associations, who have testified as to my moral qualities—that is, as to the question of intemperate habits—and who swear to the fact that I am not addicted to such habits. The first of these is Senator D. W. Voorhees, who solemnly swears to the fact that he has known me for ten or twelve years, and *knows of no habits on my part which would unfit me for promotion*, he being intimately identified with me during that period of time. He further swears that if he was a large owner in a steamship company, or the owner of a large vessel with a valuable cargo, he would, based upon his own personal knowledge and of my high reputation as an officer, trust me with the command of such vessel, *even if it contained his wife and his children*—a more precious charge than any other cargo which could be placed under my control.

I also refer to the testimony of Judge John J. Key who has known me intimately since 1873, and who has known me as a neighbor socially and intimately since that

period of time, and has heard of my reputation since 1862, and who swears that I am not addicted to habits of intemperance, but that I enjoy in a high degree a moral and exemplary reputation; and in this connection reference is particularly requested to his testimony in detail.

I have thus concluded the analysis of the testimony before the first board and that of your own; and I desire to state, in conclusion, that in no sense can the jurisdiction of this board assume the functions of a court-martial, so as to suspend or deprive an officer of promotion on account of any wrong act or conduct on his part, as it would be in conflict with the sixth section of the act of July 15, 1870, and section 1456 of the Revised Statutes, which prescribe that no officer of the Navy shall be placed on the retired list because of *misconduct*, but he shall be brought to trial by court-martial for such misconduct. And in this connection, bearing upon the scope and authority of examining boards, I desire to read, for the information of this board, two decisions rendered by the Navy Department, one of date 28th of April, 1873, and one of February 25, 1874 (see Appendix 1 and 2), bearing upon this subject, the correctness of which will be verified by reference to the recorder, who has the originals in his possession. These opinions are not alone of the department, but emanate directly from the President of the United States, who, through the Secretary of the Navy, under the law, has the exclusive authority to appoint an examining board, to prescribe the rules for its guidance, and to define the principles of law applicable thereto, and to dissent from its conclusions.

Having thus concluded my final statement, I cheerfully submit it for your consideration, believing that your judgment will be strictly impartial and in conformity with law and justice.

Respectfully submitted,

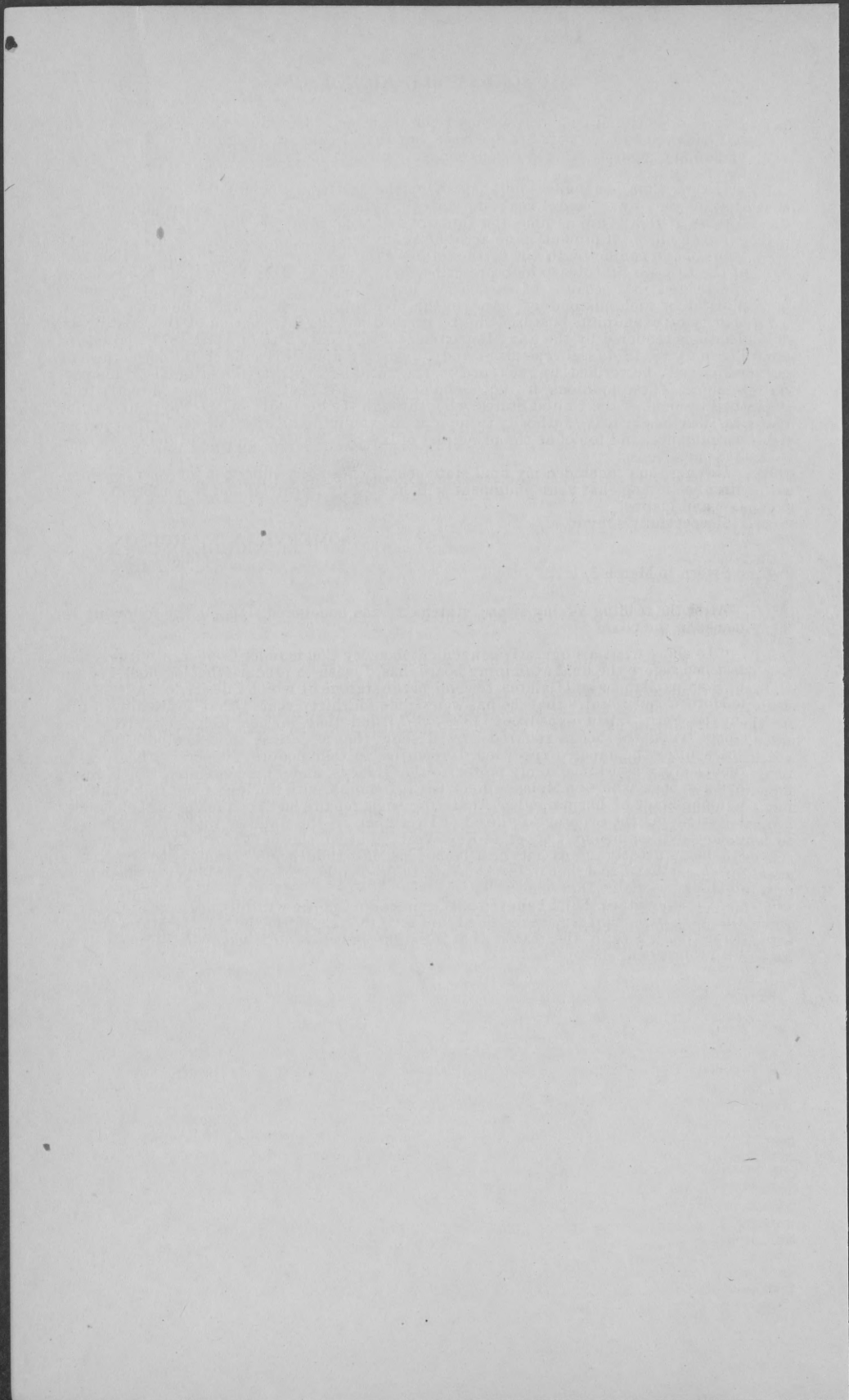
SOMERVILLE NICHOLSON,
Captain, U. S. Navy.

Sworn to March 5, 1878.

After the reading of my sworn statement was concluded, I made the following remarks to the board:

"To show what a singularly convenient memory Commander Cooper, a witness who testified before the final examining board, has, I wish to produce the log-books of the U. S. ships *Glaucus* and *Galatea*, to confirm the statement which I desire to make. Commodore Cooper states that he has known me for thirty years; that I sailed with him in the Perry Japan expedition, 1852-'53-'54, and that he has seen very little of me since; when the books referred to will show that as late as in December, 1864, ten years after the Japan expedition, I reported to Commodore Cooper, with orders to render every assistance in my power to the *Glaucus*, under his command, which vessel had run been ashore on Molasses Reef, Great Inagua, with the loss of her rudder and all but one blade of her propeller; that after some repairs had been made to the *Glaucus* I started, on the evening of the 2d of December, in the *Galatea*, under my command, to convoy Commodore Cooper to Key West; that on the next morning, the wind and sea being greatly increased, the *Glaucus* lost her rudder and became entirely unmanageable; that I took her in tow, and after fifty-two hours I anchored her in the harbor of Gonaives, Saint Domingo.

"I further state that I believe that Commodore Cooper willfully neglected to refer to this very important service rendered him ten (10) years after the time he states that he served with me, for the reason that it might possibly work somewhat injuriously to his professional character."



APPENDIX.

NAVY DEPARTMENT, *April 28, 1873.*

SIR: The record of examination, and the case of Captain Clitz, is re-referred to the ex-board, with the remark that the formal finding of the board, signed by all the members, is, in the opinion of the Secretary, wholly contradicted and nullified by the recommendation and expression of opinion which follow it, signed by a majority of the board. This board is in no sense a court-martial, and has no power to *punish*, or suspend, or deprive an officer of promotion on account of any wrong act or conduct on his part. This is not only clear on principle, but it is expressly confirmed by the effect of the sixth section of the act of July 15, 1870.

The power of the board consists in finding whether an officer—not because he has or has not done any particular thing, but by reason of the condition of his mental, moral, and professional character, resulting from having done or not done certain things—has or has not as a quality, condition, or habit the mental, moral, and professional fitness required to perform the regular duties of the grade to which he is to be promoted.

Particular acts or conduct are only material in this consideration to the extent that they go to evidence the mental, moral, or professional quality, condition, or habit which possesses and makes the part of the individual. Thus, particular instances of intemperance, however glaring and unjustifiable, are to be considered, by the board, *not* in their criminal light for the punishment, or for the purpose of saying whether or not the officer committing them *deserved* promotion, but only to the extent that they make or evidence a *condition of character* of habitual drunkenness. And certainly no board can properly say that an officer is not morally qualified by reason of a habit of intemperance—and it is the condition of his character, and not his particular act, that they must find and act upon—when at the same time a majority of the board declare that in their opinion he is an efficient officer, and that in their belief he is not habitually an intemperate man. This is the condition of the recommendations of this case, and whilst the Secretary cannot consider this a recommendation for promotion, he certainly cannot approve the recommendation of the board, founded, in fact, for its legal support, by a finding by the board that the officer is habitually intemperate, when a majority of the board declare expressly that they do not think he has that habit.

In regard to the testimony of junior officers, the Secretary is of opinion that it would be better that juniors should be asked in the future to send facts only.

If the board think that Captain Clitz has been guilty of particular acts of intemperance, though they do not think him habitually intemperate, the department, on this appearing, can order a court-martial to investigate and punish these offenses; and any officer having knowledge of such instances should have reported them to the department for judicial investigation, according to law, and not merely make them the foundation of an opinion given in a case where particular acts are not to be investigated.

G. M. ROBESON.

Rear-Admiral J. RODGERS.

FEBRUARY 25, 1874.

SIR: The record of proceedings of the Naval Examining Board, in the case of Capt. Wm. Rockendorf, are referred back to the board. I have carefully heard and considered the testimony, record, and answers in this case, and am constrained to say that the effect of these seems to me to be wholly insufficient to warrant an affirmative conclusion against Captain Rockendorf upon a point the substantial decision of which, however carefully avoided in language, cannot fail to be understood as deciding his case and as seriously affecting his personal and professional standing. The single incident referred to by Admiral Bailey is uncertain in character and most imperfect in details, and its real nature, it seems to me, is fairly concealed by the fact that it passed during the long interval since its occurrence entirely unacted upon, unnoticed, unremarked, and even in remembrance, until the present occasion. All the other testimony adverse to Captain Rockendorf shown on the record consists of the general and inferential opinion of one or two officers, founded in part perhaps upon the incident above referred to, and certainly largely overborne by the weight of favorable testimony in the case. Under these circumstances, although the Secretary has no

power to constrain the action of the board in this or any other case, and certainly has no desire to influence their decision without convincing their judgment, he feels it to be his duty to so refer the case to them for further examination.

G. M. ROBESON.

Commodore W. E. LEROY.

RECORD OF SERVICE OF CAPTAIN S. NICHOLSON, U. S. N.

June 21, 1839, appointed acting midshipman.

From July 9, 1839, to July 31, 1842, served on board United States frigate Brandywine (Mediterranean).

From February 1, 1843, to January 29, 1844, served on board United States brig Truxton, bringing the remains of Commodore D. D. Porter from Constantinople to the United States.

From March 11, 1844, to April 13, 1844, on board the United States steamer Princeton. August 29, 1844, ordered to Naval School, Philadelphia; passed my examination in May, 1845.

From June, 1845, to January 21, 1848, on coast survey duty.

From January 21, 1848, to August 4, 1849, acting master on board United States steamer Alleghany—Brazil and Mediterranean stations.

From August 17, 1849, to October 8, 1852, on coast survey duty.

From October 8, 1852, to April 25, 1855, served as acting master and lieutenant on board the United States ships Powhatan and Mississippi, attached to Commodore Perry's Japan expedition.

May 5, 1854, commissioned lieutenant.

From January 10, 1856, to April 31, 1857, on ordnance duty, Washington navy-yard.

From April 12, 1857, to September 3, 1859, on board United States ship Cumberland (African station).

From October 29, 1859, to December 5, 1860, on ordnance duty, Washington navy-yard.

From December 5, 1860, to January 2, 1862, on board United States ships Macedonian (Gulf of Mexico and home stations).

From January 10, to December 26, 1862, in command of United States ship Marblehead (co-operating with McClellan's army, York and Pamunkey Rivers, and blockading duty off Charleston).

July 16, 1862, promoted to lieutenant-commander.

January 2, 1863, promoted to commander.

From June 1, 1863, to October 20, 1863, in command of iron-clad Sangamon (James River).

From November 3, 1863, to November 9, 1864, in command of United States ship State of Georgia, on blockade duty off Wilmington.

From November 9, 1864, to July 3, 1865, in command of United States ship Galatea (convoy duty, West Indies).

From August 21, 1865, to September 27, 1866, special duty, Washington navy-yard.

From September 27, 1866, to October 1, 1868, as assistant to executive officer Washington navy-yard.

From February 23, 1869, to October 31, 1869, member of ordnance board, Washington, D. C.

From November 1, 1869, to October 9, 1870, command of United States ship Benicia, Asiatic squadron.

From April 6, 1871, to December 1, 1871, member of special board, Washington navy-yard.

From August 15, 1873, to February 24, 1874, in command of flagship Lancaster, South Atlantic station, and drill squadron, Pensacola Bay.

November 27, 1864, suspended from duty (by sentence of court-martial) for six years, on furlough pay, from April, 1874.

June 1, Secretary of the Navy remitted that part of the sentence placing me on furlough pay, and on October 3, 1876, Secretary of the Navy revoked the unexpired portion of the sentence. Since the last date I have been unemployed.

My record thus shows that up to the time of my court-martial I had been thirty-five years and two months in service—seventeen years and eight months sea service; shore or other duty, eleven years and eight months; unemployed, five years and ten months.

Respectfully submitted,

S. NICHOLSON,
Captain, U. S. Navy.

WASHINGTON, D. C., November 4, 1877.